

## Right to information and information privacy policy and procedures

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### 1. Policy statement

The purpose of this policy is to outline the functions and activities to be undertaken by employees of the Queensland Ombudsman in discharging their functions as decision-makers under the [Right to Information Act 2009](#) (RTI Act) and the [Information Privacy Act 2009](#) (IP Act).

### 2. Principles

The government's approach to accessing government-held information is that information should be released administratively, as a matter of course, unless there is a good reason not to, with applications under the RTI Act or IP Act being necessary only as a 'last resort'.

The RTI Act and the IP Act create an enforceable right of access to information in the government's possession or control unless the information is exempt, or unless it is, on balance, contrary to the public interest to give access.

The legislative intent of the RTI Act and IP Act is that they should be administered with a pro-disclosure bias. The Office may deal with an access application even if the RTI Act provides that it may refuse to deal with the application.

### 3. Application/scope

The Office of the Queensland Ombudsman is subject to the application of the RTI and IP Acts.

As principal officer, the Ombudsman has delegated the power to deal with access applications and internal review applications under the RTI Act and IP Act to certain employees, as named in the schedule to the relevant Instrument of Delegation. The RTI/IP Coordinator is responsible for the administrative aspects of dealing with applications made under the RTI Act and IP Act, including the receipt, acknowledgement and logging of applications, and the keeping of required statistics and reports.

The RTI Act and IP Act have implications for all employees (including permanent, temporary and casual) because they are all involved in the process of creating and managing records, and may also be required to search for documents pursuant to an RTI Act or IP Act application.

### 4. Procedures

#### 4.1 Administrative access

Administrative access arrangements refer to the process of releasing information which is not specifically authorised or provided for in legislation. Examples include information that is available on the Office website, including the publication scheme and the disclosure log. The RTI/IP Coordinator has responsibility under the [Administrative access policy](#) to accept, allocate and/or process administrative access requests for certain documents.

##### 4.1.1 Publication scheme

Section 21 of the RTI Act and Ministerial Guidelines require publication schemes to meet certain minimum standards. For example, they include that information that is routinely available should be easy to access, either through the agency's website, by collection from the agency or by request, or by providing it quickly by mail or email.

The Office makes as much information as possible available through its [publication scheme](#). The scheme describes and categorises information routinely available from the Office. Where practical, this information is able to be accessed from the Office's website.

Information is grouped and available through seven classes:

- About us
- Our services
- Our finances
- Our priorities
- Our decisions
- Our policies
- Our lists and registers.

##### 4.1.2 Disclosure log

Section 78 of the RTI Act requires agencies to keep on their website, a disclosure log which lists non-personal documents that have been released in response to RTI access applications made to the Office. A copy of the document is to be located in the disclosure log, if reasonably practicable. Otherwise,

details identifying the document and information about how the document may be accessed may be included in the disclosure log.

## 4.2 Access applications

### 4.2.1 What should an employee do when they receive an application?

An employee who receives a letter or application requesting access to documents under the RTI Act or IP Act, or where it is considered that access to information held by the Office is being requested under those Acts (although not expressly stated) must forward the letter or application to the RTI/IP Coordinator, within one working day of receipt.

If an employee is unsure if the request should be characterised as an RTI or IP request, they should seek advice from the RTI/IP Coordinator or General Counsel.

### 4.2.2 Who can make an access application?

An application under the RTI Act or IP Act may be made by:

- a person resident in Australia, whether or not they are an Australian citizen
- a person resident abroad, whether or not they are an Australian citizen
- a company, association or other legal entity or group
- a person serving a sentence in prison, or
- a child.

Applicants do not need to demonstrate a special interest or 'need to know', nor are they required to provide reasons for applying for particular documents.

### 4.2.3 RTI Act or IP Act application?

If the applicant is seeking access to their own personal information, they should apply under the IP Act. If the documents sought include one document that contains no personal information about the applicant, the application should be made under the RTI Act. The application form is the same, irrespective of which Act applies.

Application fees and processing charges apply to RTI Act applications – see below. Access charges may apply to applications made under either Act. There is no application fee for access to documents under the IP Act.

Upon receipt of an application, the RTI/IP Coordinator will assess whether the application has, on its face, been made under the correct Act. If the RTI/IP Coordinator considers, on the information contained in the application form, that an application that has been made under the IP Act should have been made under the RTI Act, the RTI/IP Coordinator will contact the applicant to advise them accordingly, and request that the application fee be paid. The application will not be valid until the application fee has been paid.

Sometimes, it will not be possible to make a proper assessment of which Act applies to an application until the documents in issue have been located and examined. At that stage, the assessment of whether the request should be dealt with under the RTI Act or the IP Act will be made by the decision-maker. If the decision-maker considers that the application has been made under the wrong Act, they must notify the applicant and either collect the application fee (if it should be an RTI application) or refund the application fee (if payment received but it should be an IP application).

If in doubt, or it is not clear, the applicant should be contacted by the RTI/IP Coordinator or the decision-maker to confirm and/or clarify what they are seeking access to.

### 4.2.4 Is it a valid application?

The initial assessment of whether an application is valid will be made by the RTI/IP Coordinator. If the application is deficient in any way, the RTI/IP Coordinator will liaise with the applicant to assist them to make a valid application.

In order for an application to be valid, it must satisfy the requirements in s.24 of the RTI Act or s.43 of the IP Act. These are outlined in the table below:

#### Requirements for a valid application

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Application is in the approved form.

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Application is accompanied by the current application fee (*only for RTI applications*).

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Application provides sufficient information about the document to enable it to be identified.

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Application provides an address to which written notices may be sent.

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If the applicant is seeking access to their personal information they must provide a certified copy of identification (*or within 10 business days of the initial application*).

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If the application is being made by an agent on behalf of the applicant and the application is for personal information of the applicant, the agent must provide appropriate evidence of authority and a certified copy of their identification (in addition to the applicant's requirement above).

The approved form for an access application is available on the Office website. If a request is received in a form (for example, a letter) that is substantially compliant with what is required in the application form, then it still may be accepted (see s.49 of the [Acts Interpretation Act 1954](#)).

### 4.2.5 What can be applied for?

An application can be made under the RTI Act and IP Act for a 'document of an agency'. Document is defined in s.36 of the Acts Interpretation Act and includes:

- any paper or other material on which there is writing
- any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them
- any disk, tape or other article or any material from which sounds, images, writing or messages are capable of being reproduced (with or without the aid of any other article or device).

The definition is very broad and includes hard copy files, electronic files, computer printouts, emails, work diaries, maps, plans, photographs, post-it notes, tape recordings or videotapes and other means of storing information, no matter how old.

A document includes copies and extracts of documents. It also includes draft documents and notations made on draft documents.

A document of an agency is a document (other than a document to which the RTI Act or IP Act do not apply) in the possession or under the control of an agency, whether brought into existence or received in the agency, including:

- a document to which the agency is entitled to access; and
- a document in the possession, or under the control, of an officer of the agency in the officer's official capacity.

It therefore captures documents in the possession of consultants or external service providers that are not physically in the possession of the Office.

Section 27 of the RTI Act provides that an access application is taken only to apply to documents that are, or may be, in existence on the day the application is received. That is, an agency is not obliged under the RTI Act to create a new document in order to respond to an access application. However, it may, at its discretion, negotiate with the applicant to create a document containing the requested information. No processing or access charge is payable in connection with obtaining access to the document, and there is no entitlement to a review under the RTI Act of the agency's decision about the document.

#### **4.2.6 Transfer of an application**

The initial assessment of whether an application should be transferred to another agency will be made by the RTI/IP Coordinator. Agencies are able to transfer applications, in whole or in part, where the documents sought are not in the original agency's possession but are believed to be in the possession of the other agency (see s.38 of the RTI Act and s.57 of the IP Act). However, a transfer can only occur if the other agency consents to it.

#### **4.2.7 Acknowledgement**

Upon receipt of a valid application, the RTI/IP Coordinator will contact the applicant to:

- acknowledge the application
- confirm the scope of the application
- outline the statutory processing timeframes.

#### **4.2.8 Who makes the decision?**

Under an instrument of delegation made pursuant to s.30(2) of the RTI Act and s.50(2) of the IP Act, the Ombudsman has delegated the power to deal with applications to specified employees.

After acknowledging the application, the RTI/IP Coordinator will refer the file to the Deputy Ombudsman who, after consultation with the relevant Assistant Ombudsman, will allocate the file to a delegated decision-maker.

#### **4.2.9 Timeframes**

Upon receipt of an application, the decision-maker must make a note of the relevant processing deadlines set out in the RTI Act or IP Act and arrange for electronic diary reminders to be generated. Even where a specific timeframe is provided for in the Act, decision-makers should carry out the relevant activity as soon as practicable, and within the specified time limit.

The standard timeframe for processing an application is 25 business days. The processing period can be extended, for example, if consultations with third parties are necessary (an additional 10 business days are allowed), or if certain steps need to be taken in relation to fees and charges.

The timeframe for calculating the due date for a specified activity excludes the event which starts the clock. The day on which this 'initiating event' occurs is treated as 'day zero'. Accordingly, the day that a valid application is received by the Office is not counted in calculating the processing period.

For further information regarding timeframes, see the [Information Commissioner's guidelines](#) – Timeframes for processing applications and How to calculate timeframes.

#### **4.2.10 Searches**

It is the decision-maker's responsibility to ensure that diligent and thorough searches for all responsive documents are conducted. This includes:

- archival searching (if relevant)
- searches of relevant hard-copy files
- searches of relevant electronic files
- consulting with each employee who had involvement in the matter to check whether they possess any other relevant records, including hard-copy documents, emails, file notes, diary entries, etc.

The decision-maker must keep a clear record on the file of all areas and files that were located and searched in response to the application.

If there is any doubt about the types or categories of documents to which the applicant is seeking access, the decision-maker must contact the applicant, at the earliest possible opportunity, to discuss the terms of the application and to clarify the documents to which access is sought.

Where it is not possible to establish the whereabouts of a document because it has been lost, or is missing or has been destroyed, the decision-maker must fully document the thoroughness of the search. It may be necessary to provide a Statutory Declaration detailing the searches conducted and any possible explanation for the fact that documents are lost, missing, or have been destroyed (for example, documents may have been destroyed in accordance with the [Public Records Act 2002](#) and the [Retention and Disposal Schedule \(QDAN 553 v.2\)](#)).

Where it can be shown that an officer has destroyed documents, or falsely denied knowledge of documents or concealed documents, disciplinary or criminal penalties may apply.

#### 4.2.11 Schedule and charges estimate notice

There is no requirement to supply either a schedule of documents or a charges estimate notice (CEN) under the IP Act.

Under the RTI Act, the decision-maker must give a schedule of responsive documents to the applicant before the end of the processing period, unless the applicant waives the requirement (either verbally or in writing).

A schedule of documents must:

- set out and give a brief description of the classes of responsive documents; and
- set out the number of documents in each class.

Section 36(1) of the RTI Act also requires the decision-maker to supply a CEN to the applicant before the end of the processing period.

In order to issue a CEN, the decision-maker must:

- decide if any access or processing charges are payable for the application; and
- estimate the amount of those charges.

The applicant has 20 business days from the date of the CEN to confirm, narrow, or withdraw the application (although the decision-maker may agree to extend that period). If the applicant does not do any of these things within the requisite time-frame, the application will be taken to be withdrawn.

The time between the date of the CEN and the day that the applicant confirms the application, or confirms any changes to the application, is not counted as part of the processing period.

Charges may be waived in certain limited circumstances, but the application fee cannot be waived. A processing charge, or an access charge, may be waived if the decision-maker considers the likely associated costs to the agency or Minister would be more than the likely amount of the charge (that is, it is uneconomical to charge – see s.64 of the RTI Act).

Decision-makers should refer to the [Information Commissioner's guidelines](#) – Fees and charges for further information regarding the CEN process.

#### 4.2.12 Examining and marking up documents

Once the responsive documents have been compiled, the decision-maker must examine them and identify whether they contain any exempt information or 'contrary to the public interest to release' information. Where information is to be removed from documents, the decision-maker should consult with the RTI/IP Coordinator regarding the use of Redax software to remove the information electronically.

#### 4.2.13 Consultation with third parties

The decision-maker must consult with a third party where the decision-maker is considering releasing all or part of a document that could reasonably be expected to be of concern to a person, agency or government.

The decision-maker does not need to consult where he or she has already formed the view that the relevant document will not be released.

If a third party, upon being consulted, objects to disclosure of the document, but the decision-maker decides to release the document, the third party has review rights. Access to the document in question must be deferred until the third party has had an opportunity to exercise all of their review rights.

Decision-makers must take care about disclosing the identity of the applicant to the third party, as it may amount to a breach of the applicant's privacy. The identity of the applicant may be disclosed to the third party where the applicant agrees or where:

- the identity of the applicant was relevant to the decision-maker's assessment that the disclosure could reasonably be expected to be of concern to the third party;
- it may be important to any submissions the third party might be able to make;
- it is otherwise required to afford procedural fairness in the consultation process.

#### 4.2.14 Extension of time

If the decision-maker does not think that they will be able to make a decision by the end of the processing period, they can contact the applicant to request an extension of time. The decision-maker must make this request before the end of the processing period. The decision-maker can continue considering the application provided the following criteria are met:

- the applicant has not refused the request
- the Office has not received notice that the applicant has applied for a review of the deemed refusal.

#### 4.2.15 Grounds for refusing access to documents

There is a pro-disclosure bias in the RTI Act and the IP Act and the grounds upon which access may be refused are to be interpreted narrowly. Both Acts state that access should be given unless, on balance, it would be contrary to the public interest to do so. An agency may also give access even where there are grounds on which access may be refused.

The decision-maker may refuse access:

- to the extent the document comprises exempt information
- to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest
- if the document is sought under an application made by or for a child, to the extent the document comprises the child's personal information and disclosure would not be in the child's best interests
- if the document comprises an applicant's healthcare information, the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant
- if the document is non-existent or unable to be located, or
- if other access to the document is available.

Decision-makers should be aware that a factor favouring non-disclosure in the public interest (see factor 18 in Schedule 4 to the RTI Act) is that 'disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman ...'. This is also a factor 'favouring non-disclosure in the public interest because of public interest harm in disclosure' (see s.2 of Schedule 4 to the RTI Act). This factor may be of relevance if an RTI or IP application has been made and the relevant Ombudsman investigation has not been finalised.

#### **4.2.16 Notice of decision**

Before the end of the processing period, the decision-maker must provide the applicant with a 'prescribed written notice' which sets out:

- the decision and the reasons for the decision (including a decision to refuse to deal with the application)
- the name and designation of the officer who made the decision
- the date of the decision
- an itemisation of any processing and access charges payable by the applicant
- the period within which the applicant may access the document
- details of review rights.

If the decision is to release information contrary to the objections of a third party, the third party must also be given a copy of the decision and advised of their review rights.

#### **4.2.17 Access to documents**

If it is not necessary to defer access to non-exempt documents because of a third party's review rights, access to documents should be given only after receipt of payment for any processing or access charges that are payable by the applicant. Documents should be watermarked or stamped with 'Released under RTI/IP' before being released.

Access should be provided in the form requested by the applicant, but that does not prevent the decision-maker from negotiating with the applicant to provide alternative forms of access. Applicants may choose a preferred access method, such as:

- inspect documents
- obtain photocopies of documents
- receive documents via email
- obtain documents on a DVD or CD.

If copies of documents are to be provided by email or saved to a CD, care must be taken to ensure that they cannot be altered nor their history interrogated. (The Redax software does this.)

Hard copies of documents or CDs must be sent to the applicant by 'person to person' registered mail with an acknowledgement receipt. If emailing documents to the applicant, access the 'Options' tab in Outlook and request a 'read receipt'.

Documents that do not contain any exempt information or contrary to the public interest information can be made available for inspection (subject to the applicant providing an acceptable form of identification prior to inspecting). Applicants must be supervised at all times while undertaking the inspection.

#### **4.2.18 Disclosure log**

If a decision is made in relation to an application to give access to a document that does not contain the applicant's personal information and the applicant accesses the document, then a copy of the document may be included in the disclosure log which is published on the Office's website. Alternatively, details identifying the document and stating how the document may be accessed may be included in the log.

Agencies have a discretion not to publish documents if there is a clear reason not to (for example, they contain the personal information of a third party, or they contain exempt information).

After the applicant has accessed the relevant documents, the decision-maker should identify any document that is appropriate to include in the disclosure log and notify the RTI/IP Coordinator by marking the relevant section located on the inside cover of the file.

#### **4.2.19 File closure**

Upon finalisation of all steps in the decision-making process, the decision-maker must complete the information requested on the front cover and inside cover of the file. The decision-maker must ensure that the file is ordered and contains all relevant documents and correspondence. The decision-maker must also ensure that a copy of the decision is at the front of the file, as well as a copy of all documents dealt with in the application – clearly marked as exempt, released or partially released. Documents that have been partially released must clearly show where information has been deleted.

The decision-maker must then return the file to the RTI/IP Coordinator who will enter the relevant information from the file into the Annual Report spreadsheet and check that all relevant steps have been completed.

#### **4.2.20 Internal and external reviews**

If an applicant is dissatisfied with the initial decision, they have the option of applying to the Office for internal review. The internal review decision-maker must not be the original decision-maker and must be no less senior than the original decision-maker. Under an instrument of delegation made pursuant to s.30(2) of the RTI Act and s.50(2) of the IP Act, the Ombudsman has delegated the power to deal with internal review applications to specified officers.

Internal review applications are to be referred to the RTI/IP Coordinator. After opening an internal review file and acknowledging the application, the RTI/IP Coordinator will refer the file to the Deputy Ombudsman who will allocate the file to a delegated internal review decision-maker.

Alternatively, the applicant can apply to the Information Commissioner for external review. They may also apply for external review if they have applied for internal review and are dissatisfied with the internal review decision, or if no decision was made during the requisite period.

The Office's response to a review conducted by the Information Commissioner will be managed by General Counsel.

### **4.3 Amendment applications**

#### **4.3.1 What should an employee do when they receive an application?**

An employee who receives a letter or application requesting an amendment to personal information under the IP Act, must forward it to the RTI/IP Coordinator within one working day of receipt.

#### **4.3.2 Who can apply for amendment?**

Only the individual who believes their personal information is out of date, inaccurate, incomplete or misleading can apply to have it amended.

In some circumstances, others who may apply on an individual's behalf include:

- a parent of a child
- an eligible family member of a deceased person
- a person with an appropriate interest applying on behalf of a deceased person.

No application or processing charges apply. Certified identification and/or an authority to act must be provided within 10 business days after the application was submitted.

#### **4.3.3 Acknowledgement**

Upon receipt of an amendment application, the RTI/IP Coordinator will:

- create a file in EDOCS (and a hard file if necessary)
- send an acknowledgement (letter or email).

#### **4.3.4 Who makes the decision?**

Under an instrument of delegation made pursuant to s.50(2) of the IP Act, the Ombudsman has delegated the power to deal with amendment applications to specified employees.

After acknowledging the application, the RTI/IP Coordinator will refer the file to the Deputy Ombudsman who, after consultation with the relevant Assistant Ombudsman, will allocate the file to a delegated decision-maker.

#### **4.3.5 Timeframes**

The standard timeframe for processing an amendment application is 25 business days from the date of a valid application. This time may be extended if the applicant agrees. If a decision is not made in time the Ombudsman is deemed to have made a decision refusing to amend the document.

#### **4.3.6 Notice of decision**

Before the end of the processing period, the decision-maker must provide the applicant with a 'prescribed written notice' which sets out:

- the decision
- the reasons for the decision
- the day on which the decision is made
- the name and designation of the person making the decision
- any rights of review available, including timeframes for seeking review.

#### **4.3.7 Form of amendment**

If the decision-maker decides to grant the amendment, they may do so by:

- altering the personal information, including by way of deletion
- adding an appropriate notation to the personal information.

When making an alteration it is usually sufficient to strike through the words to be amended, add a side note indicating the nature of the defect, and insert the correct details or a note of where the correct details are to be found. It is also possible to include a copy of more accurate or up to date information on the file.

Any notation must:

- state how the information is inaccurate, incomplete, out of date or misleading

- if the information is claimed to be incomplete or out of date, set out the information required to complete the information or bring it up to date.

The existence of the notation should be clearly indicated on the cover of each of the applicant's files and the amendment itself should include a reference to the fact that the record was amended under the IP Act.

#### 4.3.8 Notation if amendment refused

If the decision-maker refuses to amend the applicant's personal information the applicant can require the Office to add a notation to the document that:

- states the way the applicant claims the information to be inaccurate, incomplete, out of date or misleading
- if the applicant claims the information is inaccurate or misleading – set out the amendments the applicant claims are necessary for the information to be accurate or not misleading
- if the applicant claims the information to be incomplete or out of date – set out the information the applicant claims is necessary to complete the information or to bring it up to date.

The decision-maker is not required to use the applicant's exact wording in any notation.

#### 4.3.9 Internal and external reviews

If an applicant is dissatisfied with the decision, they have the option of applying to the Office for internal review or to the Office of the Information Commissioner for external review.

## 5. Roles and responsibilities

Role	Responsibility
Refer information request to RTI/IP Coordinator	All employees
Conduct searches for responsive documents	All employees
Administrative access arrangements; valid application requirements; file administration; statistical reporting; use of Redax software	RTI/IP Coordinator
Referral of initial and internal review applications to delegated decision-maker	Deputy Ombudsman
Initial decisions	Delegated initial decision-makers
Internal review decisions	Delegated internal review decision-makers
Coordinating response to external reviews	General Counsel

## 6. Related documents

The Office of the Information Commissioner has produced detailed guidelines on the operation of the RTI Act and the IP Act which are available from the [Office of the Information Commissioner](#).

Other related documents include:

- [Acts Interpretation Act 1954](#)
- [Information Privacy Act 2009](#)
- [Right to Information Act 2009](#)
- [Public Records Act 2002](#)
- [Ministerial Guidelines – Operation of Publication Schemes and Disclosure Logs \(February 2013\)](#)

Office of the Ombudsman:

- Instrument of Delegation made by the Ombudsman under s.30 of the RTI Act and s.50 of the IP Act
- [Retention and Disposal Schedule \(QDAN 553 v.2\)](#)
- [Administrative access policy](#)
- Administrative Instruction 11: Administrative access scheme