

Proactive Disclosure and Publication Schemes

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1 Overview

This section explains the concept of 'proactive disclosure' and sets out what agencies need to do to meet relevant requirements regarding publication schemes. It also discusses issues to be taken into account in achieving 'best practice' for publication schemes. This guideline must be read in conjunction with the Ministerial guidelines¹ for compliance with section 21 of the *Right to Information Act 2009* (the RTI Act).

2 Background

Access to government information in Queensland is changing. The Government Response to the *Right to Information Report* delivered to the Premier by the Independent Review Panel on 10 June 2008, signalled a new era of openness in government agencies, and Report recommendations have been addressed in the RTI Act and other initiatives.

Agency publication schemes, disclosure logs and administrative access arrangements are key components in providing the public with greater access to information held by government. They support a 'push model' of disclosure where information is proactively made available without a person being required to make an application through a legislative process in many cases.

The new approach to maximise disclosure where possible under the RTI Act will include:

¹ The Ministerial Guidelines are published by the Department of Premier and Cabinet online at www.rti.qld.gov.au.

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- information being made available proactively where possible such as through publication schemes
- easier access to specific types of information through administrative access schemes
- where information is not available through publication schemes, administrative access schemes or other means, specific consideration whether disclosure of information sought under an access application process would be contrary to the public interest or otherwise exempt.

Under the RTI framework, an access application for documents under the legislative process set out in the RTI Act is to be the last step to be taken by an applicant where information cannot be otherwise easily accessed and sensitivities need to be carefully considered.

These Guidelines set out the legislative requirements for publishing information under the RTI Act as well as recommendations for best practice. Separate guidelines provide guidance in relation to disclosure logs and administrative access schemes. They aim to assist in achieving consistency in the release of information, taking into account 'best practice' and other standards in Queensland, Australia and internationally.

The *Right to Information Report* made recommendations aimed at significantly changing Queensland's information access framework, emphasising a 'push model' of disclosure, where information is routinely made available outside of a legislative access application process. The Queensland Government, in its response to the Report, agreed there is a need for government to renew its commitment to freedom of information through a new policy and legislative approach².

Consistent with these changes, additional information will be routinely available from government agencies without the need for applications under the RTI Act. One of the mechanisms through which information will be made available is publication schemes prepared by Queensland government agencies. These Guidelines will assist agencies in making those changes.

These Guidelines incorporate information from the Ministerial Guidelines, with which the legislation requires all agencies to comply, and draw on guidance produced regarding similar requirements in the United Kingdom.

3 Proactive Disclosure

The Government Response to the *Right to Information Report* stated:

It is fundamental to an open and participatory government that information is provided as a matter of course, unless there are good reasons for not doing so.

The policy framework will be based on guiding information policy principles, strategies and standards that position legislative access as the act of 'last resort' in accessing government information.

² *The Right to Information- Response to the Review of the Freedom of Information Act, 2008.*

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These principles, strategies and standards to enhance proactive disclosure (sometimes referred to as 'proactive release' or 'routine release') include:

- comprehensive publication schemes
- proactive decision making processes, supported by frameworks such as 'ex ante' decision making (where decisions about release of specific information are made before an application for access to it is made)
- disclosure logs that provide online access to certain information already released under the FOI and RTI Acts
- administrative release of information through the use of executive discretion in good faith and in the appropriate circumstances
- using discretion to release documents that may be technically exempt and only refusing to disclose documents when there is good reason.

The provisions of the RTI Act, including its objects and preamble, support these principles. Sections 4 and 5 in particular make explicit that other legislation and administrative schemes allowing access to, and publication of, information will continue in parallel with that Act.

Act not intended to prevent other publication or access

- (1) *This Act is not intended to prevent or discourage the publication of information or the giving of access to documents otherwise than under this Act if the publication of giving of access can properly be done or is permitted or required to be done by law.*
- (2) *To remove any doubt, it is declared that subsection (1) applies to —*
 - a) the giving of access to documents to which this Act does not apply, exempt documents and contrary to public interest documents; and*
 - b) the publication of information and the giving of access to documents by an entity to which this Act does not apply or to which this Act does not apply in relation to a particular function.*

Relationship with other Acts requiring publication or access

Without limiting section 4, this Act does not affect the operation of another Act or administrative scheme that—

- a) (a) requires information concerning documents in the possession, or under the control, of government to be made available to members of the community; or*
- b) (b) enables a member of the community to access documents in the possession, or under the control, of government; or*
- c) (c) requires the publication of information concerning government operations;*
- d) whether or not on payment of a charge.*

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3.1. Advantages of a 'push model'

There are many advantages to a 'push model' of information disclosure. In many cases, release of information outside of a legislative access application process is the most efficient and effective means of meeting the needs of the community. It provides a better service to the community with low cost and faster access to information. It also saves agencies time and resources involved in dealing with individual applications and responding to phone calls and enquiries.

'Proactive release' of information (release other than in response to specific requests or applications) also demonstrates openness, accountability and transparency, showing that agencies are operating in the spirit of openness which is consistent with the objects of the RTI Act. This in turn may increase confidence in government by making its operations clearer and more visible. It may also inform the public about the practical reality of agency operations:

'disclosures which reveal the complexity of decisions, the practical constraints under which agencies operate and the efforts which they have made to overcome these, may make the public more ready to accept difficult decisions, counter any tendency to ascribe bias or bad faith to authorities and promote greater confidence in the authority's work'³

Proactive release can also be an effective tool in facilitating community participation in government initiatives, including by providing people with up to date information about their activities and the impact those activities have on resources. For example, the frequent publication of water usage including rates per person and the impact of such use was effectively used to encourage people to reduce consumption of water by assisting people to understand the impact of individual actions and contribute to achieving desired community targets.

3.2. Key Principles

The following principles are contained in the DPC Guidelines. They are derived from the new information 'push' model' outlined in the Right to Information Report⁴ and the Government's response to that report.⁵

- Access to information should be provided, unless its disclosure would, on balance, be contrary to the public interest
- There should be proactive and maximum disclosure of all (non personal) information held by an agency that falls within specified classes of information.

³ The Campaign for Freedom of Information, Response to the Information Commissioner's consultation paper on Publication Schemes, October 2001. Available at: <http://www.cfoi.org.uk/pdf/pubschresponse.pdf>

⁴ The Right to Information – Report of the Independent Review Panel, June 2008

⁵ The Right to Information – a response to the review of Queensland's Freedom of Information Act.

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- Information should, where possible, be released administratively through the exercise of administrative discretion and having regard to these Guidelines.
- Information should, where possible, be available online (through the agency website) and at no cost. Where access is not available online, agencies should provide an alternative means of access, including via compact disc or photocopy. Agencies should, where practical, refrain from charging a fee for access. There should be no charge for alternative access in cases where a person's inability to access a document online is due to a disability.
- The (publication) scheme should incorporate a disclosure log that (where possible) provides online access to information already released under the Act.
- Information made available under the scheme should be reviewed in terms of the key criteria outlined and updated on a regular basis.

The principles are also reflected in the Preamble to the RTI Act, which recognises that information may be accessed under schemes other than the Act, for example:

- administrative arrangements, including agency publication schemes
- inspection under the *Public Records Act 2002* or in a public library
- commercial schemes.

Example

Commercial schemes would include, for example, property valuation and sales search information held by the Department of Environment and Resource Management.

Agencies should take these principles and provisions into account in considering and developing their processes for proactive release.

3.3. Continuing role for RTI applications

It is intended that access to information utilising the process under the RTI Act will be used as a last resort. Applications will continue to be made where an individual has been unable to access the information they are seeking through an agency's administrative access schemes. Applications for access under the RTI Act will be the most appropriate mechanism for providing access in

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some cases, particularly where complex information is requested (for example, information concerning third parties, or information the disclosure of which may harm essential public interests). This is because the legislation sets out processes to establish whether information should be released, in the context of protecting the interests of all parties.

4 Publication Schemes

4.1. What is a publication scheme?

A publication scheme sets out the kinds of information that an agency has available and the terms on which it will make the information available, including any charges that may be necessary. Where possible information can be disclosed in the publication scheme itself, through a link to the actual document. A publication scheme should make it easy for the agency and people accessing the scheme to find and use the information.

Legislatively based information access schemes such as the RTI Act and the *Information Privacy Act 2009* provide a formal structure for individuals to request specific information from agencies. Publication schemes, however, make access to information proactively available as part of that agency's normal business.

The RTI Act and the Ministerial Guidelines require agency publication schemes to meet certain minimum standards. They include that information that is routinely available should be easy to access, either through the agency's website, by collection from an agency's office or by request, with information being provided quickly by mail or email.

Relevant and up to date information from agencies' statements of affairs⁶ should be included.

4.2. Legal requirements

The RTI Act requires *all agencies covered by the Act, other than 'excluded entities'*⁷, to adopt a publication scheme. Publication schemes replace the statements of affairs required under the *Freedom of Information Act 1992* (FOI Act) (see below).

⁶ Statements of Affairs were required to be produced by agencies under the repealed *Freedom of Information Act 1992*, see section 18.

⁷ The term 'excluded entity' means a 'prescribed entity' which is an entity that is a public authority only because it is a given public functions under an Act and is declared by regulation to be a public authority for the RTI Act (see s. 16(4) and discussion in the Right of access guideline).

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The RTI Act provides:

21 Requirement for publication scheme

- (1) *An agency, other than an excluded entity, must publish a scheme (a **publication scheme**) setting out—*
 - (a) *the classes of information that the agency has available; and*
 - (b) *the terms on which it will make the information available, including any charges.*
- (2) *However, an agency (the **relevant agency**) may comply with subsection (1) if another agency publishes a scheme setting out—*
 - (a) *the classes of information that the relevant agency has available; and*
 - (b) *the terms on which the relevant agency or other agency will make the information available, including any charges.*
- (3) *An agency publishing a publication scheme must ensure that the publication scheme complies with any guidelines about publication schemes published by the Minister on the Minister's website.*
- (4) *In this section—*
Excluded entity *means a prescribed entity under section 16.*

The Act requires agencies to ensure that their publication scheme complies with the Ministerial Guidelines published by the [Department of Premier and Cabinet on their website](#).

The Information Commissioner does not have a role in approving publication schemes, however can monitor compliance with publication scheme requirements as part of the performance monitoring and reporting function in relation to an agency's compliance with the RTI legislation.

The legislation allows one publication scheme to address the requirements for more than one agency (section 21(2) of the RTI Act). For example, a Department may include the required publication scheme information for a smaller agency (such as a Board or small statutory authority) it is associated with. In such cases the publication scheme should clearly set out all required information for each agency, including relevant contact details where they are different. The publication scheme should be clearly linked from the websites of all agencies covered by the scheme.

4.2.1. Statements of affairs still required for 2008-09

The requirement set out in the FOI Act that agencies must publish a statement of affairs prepared under section 21 continues to apply for the financial year ending 30 June 2009. This means if, on commencement of the RTI Act an agency has not yet published a statement of affairs for the financial year ending 30 June 2009, the agency must do so despite the repeal of the FOI Act.

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There may be some overlap between documents published as part of agencies' statements of affairs and the new publication scheme. Subject to such information being relevant and of interest to the public, the contents of the statement of affairs may form the initial minimum content of the publication scheme.

4.3. Requirements of the publication scheme

The Ministerial Guidelines and the UK Guidelines⁸ classify information for publication schemes at a high level and broadly state the way information can be provided. They require agencies to provide details of:

- the information they will proactively make available
- how the information can be accessed
- whether or not a charge will be made for it
- the formats in which information is available.

Agencies should, in addition to the publication scheme, identify appropriate locations within their existing websites to provide many links to specific pieces of information to make it easier for people to locate the information. These locations should be accessible from the agency's webpage. Commonly the web address for these locations include the agency's website address followed by /right-to-information.

4.4. New Information should be published

The aim of the publication scheme is not merely to 'rebadge' agency material which is already available. It presents an opportunity for agencies to establish an information asset register, assess their information holdings which could be of interest to the public and maximise the disclosure of that information consistent with the RTI Act.

As a matter of best practice, and to be consistent with the *Right to Information Report*, agency publication schemes must not be limited to material currently published. They should aim to include new information as it is generated, and new types of information, rather than focussing solely on information already publicly available on web sites. Developing the publication scheme should be a catalyst for assessing which information is appropriate for release and releasing previously unpublished information.

5 Content of a publication scheme

5.1. Key criteria

Neither the RTI Act nor any Guidelines require agencies to publish all the information they hold. To do so could potentially compromise legitimate agency requirements and essential public interests, or overload websites with incomplete, out of date, unreliable or trivial information. This would mean that citizens may not be able to easily locate information, undermining the

⁸ http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/how_to_operate_publication_scheme.aspx

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effectiveness of the scheme. Agencies must have effective systems that allow citizens identify and retrieve the specific information they want and that ensure the information published is up to date and reliable.

The introduction of publication schemes is a trigger for agencies to review the information they already publish. The information published should be driven in part by what information agency stakeholders seek or would like to have access to. While there may be historical interest in older material, it may be that current and contemporary information will be of most interest.

The Ministerial Guidelines set out the following 'Key criteria for inclusion in a publication scheme':

Information included in the publication scheme must be:

- **significant** - for example key initiative and policy documents
- **appropriate** - having regard to existing legislation, privacy principles and security concerns
- **accurate** - all efforts should be made to ensure that information included is accurate, in terms of what has already been published, or what may be published on a particular topic

In applying the 'significant' criterion included in the Ministerial Guidelines, agencies are encouraged to consider

- what information may be material to the community,
- what information key stakeholders and the community expects to know
- the level of demand for a category information experienced by the agency
- whether the information is needed by the community to solve or effectively work in partnership with government to solve problems currently faced by government
- whether the information is needed by the community to prepare itself for future challenges, such as increasing climatic events associated with climate change.
- Whether the information will facilitate industry development, efficient markets and growth in trade and commerce
- Whether the information promotes community well being

Such decisions about what is significant for that particular agency should be made at a senior level within the agency and ideally after consultation with key stakeholders or large users of the agency's information assets. What is considered significant will change over time as circumstances faced by the community and government change.

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5.2. *Additional criteria*

The UK Guidelines require agencies to consider the *public interest* in the information they hold before deciding on the contents of their scheme. Other relevant criteria referred to in the UK (as adapted for this jurisdiction) include:

- the extent of public demand for the type of information
- how useful the information would be to the public (including those regulated by the agency) in dealing with the agency
- whether publication would improve the public's ability to contribute to an agency's decision-making
- whether publication would promote greater accountability by the agency, for example, by showing the basis of its decisions
- whether publication would be of symbolic importance, signalling the Government's commitment to greater openness and encouraging a positive approach to disclosure under the Act.

5.3. *Classes of information*

The DPC Guidelines set out seven classes of information which should be included in a publication scheme. A 'class of information' is a group of information records having one or more common characteristics. The model scheme specifies classes of information at a high level. Most information an agency holds will fall into these classes. The following are the specified classes of information:

1. **About us (Who we are and what we do)**
Agency information, locations and contacts, constitutional and legal governance
2. **Our services (The services we offer)**
A description of the services offered by the agency, including advice and guidance, booklets and leaflets, transactions and media releases
3. **Our finances (What we spend and how we spend it)**
Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts
4. **Our priorities (What our priorities are and how we are doing)**
Strategy and performance information, plans, assessments, inspections and reviews
5. **Our decisions (How we make decisions)**
Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations
6. **Our policies (Our policies and procedures)**
Current written protocols for delivering our functions and responsibilities
7. **Our Lists (Lists and registers)**
Information held in registers required by law and other lists and registers relating to the functions of the agency

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5.3.1. What should be included in each class of information?

The UK Information Commissioner's Office publishes 'definition documents' for different types of agencies, which may also be a useful reference.⁹ They provide examples of the types of information each agency is expected to publish, in relation to each of the above classes, to meet their obligations under the scheme. For example, in relation to government departments, see the following 'definition documents' Guideline, which applies in relation to the class of 'our decisions'.

EXAMPLE: DEFINITION DOCUMENTS - Our decisions: How we make decisions

Decision-making processes and records of decisions

We would expect information in this class to be available at least for the current and previous three years.

Major policy proposals and decisions

Information that can be made available to the public without damaging relations with other governments or the development of government policy

Background information for major policy proposals and decisions

This will include facts, and analyses of facts, relevant and important to framing major policy proposals and decisions

Public consultations

Details of consultation exercises with access to the consultation papers or information about where the papers should be obtained. The results and outcomes of consultation exercises.

Minutes of senior-level meetings

We would expect management board minutes and the minutes of similar meetings where decisions are made about providing services to be readily available. This excludes information that is properly regarded as confidential to the meeting.

⁹ Available at:

http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/definition_documents_main_page.aspx

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EXAMPLE: Definition documents continued-

Reports and papers provided for consideration at senior-level meetings

Includes information presented to those at meetings making executive decisions. This excludes information that is properly regarded as confidential to the meeting.

Internal communications, guidance, criteria used for decision-making, internal instructions, manuals and guidelines

If access to internal instructions, manuals and guidelines for dealing with the business of the department would help the public understand how decisions are made, these should be readily available. We would not expect information that would damage the department's operations to be provided through a publication scheme.

5.4. *How to identify new information that may be proactively released*

An agency should consider whether new or updated information or documents should be included in the publication scheme when the following occurs:

- new or revised legislation
- a new or revised policy
- a new publication
- a new initiative or project
- an external event (this could relate to a specific topic where it is in the public interest to release the information)
- a request for information
- a change in policy on publication
- when an organisation is restructured, including with the addition or removal of parts of the organisation – for example machinery of government changes following an election
- changes to community expectations and interests.

5.5. *Editing*

Information published under a publication scheme may be edited so that sensitive information that cannot be disclosed is deleted. This allows agencies to publish, for example, the first few pages of a document, but to withhold information which it is not in the public interest to release. Where possible, it is good practice for the agency to clearly show the document has been edited, provide a brief explanation, and a summary of the omitted section where this

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can be done in a way that does not disclose the sensitive material.¹⁰ Interested members of the community may then choose whether to apply for full or original copies of the information under the RTI Act, which can be assessed in accordance with legislative processes.

5.6. *Public registers*

One of the classes of information includes public registers. If an agency is required to maintain a register and to make the information in it available for the public to inspect, this register should be nominated in the publication scheme, whether or not a fee for access applies. A link should be provided to the register if possible.

However, if a register contains personal information, agencies must ensure they have applied the appropriate privacy protections. If a register containing personal information is searchable online without breaching privacy principles, then the link may be included. However if a person can only access the personal information by being physically present at an office under specific criteria, the publication scheme should explain what information is contained in the register and how it may be accessed, including any conditions or fees for access and use.

5.7. *Intranet information*

Agencies should consider the information contained on their intranet, and whether any of this material is suitable for inclusion in the publication scheme. Policy documents which impact on the public may be very relevant and should be included. Those with limited impact on the public (for example, policies on staff car hire) are less likely to be of interest than those which affect a person's 'rights, privileges, benefits, obligations, penalties or detriments'¹¹. Guidelines on the administration of an Act are likely to fall within this second category.

Section 19 of the FOI Act required agencies to make copies of its statements of affairs and its 'policy documents' available for inspection and purchase. A 'policy document' is defined as:

- (a) *a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or*
- (b) *a document containing particulars of an administrative scheme; or*
- (c) *a document containing a statement of the way, or intended way, of administration of an enactment or administrative scheme; or*
- (d) *a document describing the procedures to be followed in investigating a contravention or possible contravention of an enactment or administrative scheme; or*

¹⁰ Consistent with section 76 of the RTI Act in relation to access applications, to achieve greatest possible disclosure in the circumstances.

¹¹ The expression used in the FOI Act.

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- (e) *another document of a similar kind; that is used by the agency in connection with the performance of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the community are or may become entitled, eligible, liable or subject, but does not include an enactment that has already been published.*

'Internal rules' about agency dealings with the public, including procedures, administrative manuals and other agency guidelines, are often of value to citizens and are a feature of many international publication schemes. Material explaining how an agency deals with the public can increase understanding of how government works. They may cover topics such as:

- How decisions affecting members of the public are made – e.g. Considerations taken into account in deciding whether a licence is issued
- How legislation is administered – e.g. RTI Guidelines
- How services are provided – e.g. *Eligibility Policy and Procedures* prepared by Disability Services Queensland.
- How regulatory functions are exercised – e.g. *Environment Management Guideline: Enforcement Guidelines* prepared by the Environmental Protection Agency

5.8. Other documents

There are many other types of documents that agencies should consider for publication.

Examples

- contract information
- expense claims including travel
- details of costs of events
- audits, organisational charts
- job descriptions
- human resources guidelines
- responses to specific correspondence
- submissions made during public consultation
- information about meetings
- policy development information

In many jurisdictions specific information of this nature is routinely released. For example, the Australian Government discloses information about travel expenses, contracts with private entities and the names of agency records

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management files on agency websites. In Queensland some information of this nature is already routinely contained in Annual Reports.

5.9. Information requiring careful consideration

As noted above, the overarching principle of the RTI Act is that information should be released unless there is an overriding public interest reason for not doing so. In some cases it will not be appropriate for agencies to proactively release all the information they hold which falls into the seven classes.

The Ministerial Guidelines state that in considering the 'appropriate' criterion for inclusion in a publication scheme, an agency should have regard to existing legislation, privacy principles and security issues.

The grounds for refusal of access under the RTI Act are a useful guide for decision making regarding what is appropriate for inclusion in a publication scheme. Grounds for refusal of access include:

- Where information is exemption information as set out in Schedule 3 of the RTI Act, for example in relation to:
 - Legal professional privilege
 - Law enforcement or public safety
 - Certain types of Cabinet or Executive Council information
 - Where disclosure would found an action for breach of confidence
 - Where information is prohibited by a specific legislative provision (listed in Schedule 3, item 12).
- Where the disclosure of the information would, on balance, be contrary to the public interest under section 49 of the RTI Act.

In general, agencies should carefully consider whether it is appropriate to disclose information through a publication scheme where to do so would cause substantial harm if disclosed, particularly where third parties are affected. Third party information may relate to personal or commercial information that could be sensitive and may not be appropriate for broad disclosure.

Agencies should ensure disclosure is consistent with obligations under the *Information Privacy Act 2009*, which provides safeguards for the handling of personal information in the public sector environment.

Guidance on the application of exemptions and the public interest balancing test under the RTI Act, and obligations to protect personal information under the *Information Privacy Act 2009* can be found in specific guidelines produced by the Office of the Information Commissioner. RTI decision makers and Privacy Contact Officers within an agency also have specific expertise in applying such provisions. Further information is also provided below.

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Summary

Is the information *appropriate* for disclosure in a publication scheme?

Questions to ask – does the information contain or reveal:

- information from third parties – e.g personal or commercial information? This includes:
 - Information that was received in confidence from a third party
 - Information from which a person's identity is reasonably ascertainable in light of other information that is available
 - Personal information, where disclosure would be in breach of the privacy principles set out in the IP Act
- Legal advice?
- Cabinet or Executive Council information?
- Information regarding law enforcement or public safety? This includes where disclosure of information:
 - would prejudice an investigation, a person's trial or a procedure for protecting public safety
 - endanger a person's life or physical safety or result in a person being subjected to a serious act of harassment or intimidation
- Information relevant to a factor favouring nondisclosure in the public interest set out in Schedule 4, Part 3 or 4, including information where disclosure may:
 - affect relations with other governments
 - disclose trade secrets, business affairs or research
 - affect the state economy or the financial or property interests of the State or the agency
- Information where public disclosure would infringe privileges of Parliament?
- Information where its disclosure is specifically prohibited by legislation referred to in the RTI Act – e.g under the *Child Protection Act 1999* (sections 186-188) or the *Whistleblowers Protection Act 1994* (section 55(1)).

Please note – this is a general guide only. Specific tests apply before information is considered exempt or contrary to the public interest to disclose.

The above summary merely provides an initial indication of the types of information that should be considered carefully by agencies, and does not exclude its inclusion in a publication scheme. Agencies should refer to the specific provisions of the RTI Act relating to exemptions and the public interest test in particular.

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5.9.1. Personal information

This term is defined broadly as:

information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent or can be reasonably ascertained.

In most cases there is a strong interest in protecting the personal information of individuals contained in documents held by agencies. In many cases, this information should not be disclosed in a publication scheme, as to do so may breach the IP Act. Disclosure of such personal information may also be disclosure of exempt matter, or disclosure which is contrary to the public interest under the RTI Act.

An exception is personal information relating to officers employed by agencies in relation to their official duties, which in most cases will be appropriate for publication.

Information about public service employees is personal information, even when they are acting in their official capacity. This means that the privacy principles relating to use and disclosure apply to work information about public servants. The general rules are that personal information cannot be disclosed outside the agency. However, both of these general rules have exceptions. NPP 2(1)(a) allows the disclosure where it is related to purpose of collection and the individual would reasonably expect the disclosure to occur. IPP 11(1)(a) allows the disclosure where the person would be reasonably likely to be aware that the disclosure would occur. A public service employee would be reasonably likely to be aware that information about their work, and their work contact details, would be available to members of the public, and that information is related to the purpose for which that information was acquired. This means that information of this kind can be included in a publication scheme document or disclosure log without breaching the privacy principles.

5.9.2. RTI exempt information

Caution should be exercised where material may be exempt from disclosure under the RTI Act, as the exemption provisions capture types of information the disclosure of which the Parliament has considered, would, on balance, be contrary to the public interest. These essential public and private interests are appropriately protected from release by the Act.

If a publication contains some exempt matter (or disclosure would be contrary to the public interest under RTI) but the remainder of the publication is appropriate for release, agencies may consider whether it is possible to publish the information with the exempt matter deleted.

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5.9.3. Causing substantial harm if disclosed

The exemptions in the RTI Act together with the list of 'factors favouring nondisclosure' in Schedule 4 of the RTI Act, are likely to deal with the vast majority of situations where disclosure would cause substantial harm. However, even where a public interest factor is relevant to the specific information, this does not necessarily mean that the result will be that disclosure would on balance be contrary to the public interest and the information would not be disclosed.

5.9.4. Other information

There may be classes of information where other restrictions on disclosure operate, for example where there are contractual, licensing or use agreements. Again, legal advice should be sought where there are concerns about disclosing the information.

5.10. Contact details

Agencies should provide contact details for the officer (or officers) who will take responsibility for the operation of the scheme. If the person who will deal with complaints about the scheme is a different person, then that person's position title and relevant contact details should be provided too.

Contact details for a customer service area that can assist people with general enquiries about the agency and the information should also be provided prominently within the publication scheme.

5.11. Internal approval processes for publication

Agencies must develop their own processes for approval of publications based on the guidelines and the RTI framework, in a way that is appropriate to the specific agency, its business and stakeholders. In general, it is anticipated that chief executive officers will approve the content, or delegate to other senior officers with responsibility for approving the publication of certain types of publication. Records of such approval should be kept.

A chief executive officer may determine an approval process which allows publication of certain types of information as a class. For example, it may be possible for certain information of an administrative nature to be routinely published.

5.12. Working internally to make publication schemes effective

Officers at a senior level within an organisation, such as Information champions with a responsibility to promote the objectives of the RTI Act and facilitate implementation within their agency, can have a significant impact on an agency's administration of a publication scheme and its approach to proactive disclosure.

Proactive Disclosure and Publication Schemes

Knowledge and understanding of the publications scheme, and information disclosure generally, should extend across the agency. Front line officers, whether they are based at counters, reception areas, in call centres or in the field, are likely to deal with a significant proportion of phone requests or requests for information. It is important they are aware of the Government's commitment to increased disclosure of information, and, as far as possible, of the principles outlined above. There should be ongoing discussions within agencies to ensure that there are common understandings about agency information release policies and procedures.

RTI and privacy officers in particular are likely to understand issues related to publishing information, with staff of media and communications teams and Information Technology staff also likely to have insight into agencies' information practices. All staff need to be able to identify information that is exempt from release because its disclosure would be contrary to the public interest.

For proactive disclosure to be successful, including the publication scheme, agencies should:

- give front line officers authority to release as much information as possible without a formal request
- involve officers in both identifying records that should be proactively released and developing an access strategy
- provide ongoing consultation and training to raise awareness of proactive release, with the advice that they may call upon key areas (for example, RTI and information privacy branches) for advice
- develop processes and systems that keep publication schemes up to date and disclosing the maximum amount of information.
- Improve record-keeping capabilities to ensure the reliability of information.

Up to date lists of publications and records available without formal RTI applications will assist staff at all levels of the agency to identify information to be proactively released.

6 Format, accessibility and availability of information

6.1. *Web format preferred*

In many cases web publication is the preferred format for members of the community to access information, and it is often the preferred format for agencies to provide it.

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The Ministerial Guidelines indicate that where possible, information listed in a publication scheme must be easily accessible through the agency's website and a direct link to the information should be provided. If the information is only available in hard copy, a summary should provide details on how the public can access the source document in another way and the agency must ensure this information is easily accessible.

It is recommended that the agency should work towards the information being available online and work with the information technology unit to ensure this happens within existing ICT capabilities.

The information, the manner of publication and any charges should be on the agency's website, plus contact details for accessing it. It is preferable that the contact point to be the agency person with immediate access to the information. For example, HR information should be accessible through the HR contact. This process will also enable proactive release of information to occur throughout the agency, rather than only through RTI officers.

6.2. Non web based format

Some people are unable to access web based publications, and will prefer, or insist on, access to printed copies. Agencies should ensure that printed copies are made available in such cases.

In addition, there may be circumstances where the only possible way to gain access to material is by viewing it in person. As many agencies will have processes allowing applicants to inspect documents released following a decision made regarding access under the RTI Act, these arrangements may be continued in relation to publication schemes.

The Australian Library and Information Association has published its *Principles of Access to Government Information*. Whilst these principles have not been formally endorsed by the Queensland Government, they provide a 'best practice standard' for agencies to aim for. They provide, in summary, that:

- the public has a right to information from all levels of Government
- agencies should guarantee open, timely and uninhibited access to Government information, regardless of format
- Government information should be preserved, regardless of format
- Government should guarantee availability of its information through libraries
- cost should not obstruct users' access to information
- Government information should be effectively catalogued

6.3. Accessibility of information

Agencies are required to comply with relevant obligations under disability discrimination legislation to provide information in accessible formats. This is particularly relevant in the context of PDF documents made available on websites.

Proactive Disclosure and Publication Schemes

The Human Rights and Equal opportunity Commission (HREOC) has issued an advisory note on accessibility of web pages, revised in 1999 to take account of the development of international accessibility guidelines¹². They contain the following statement:

The Commission's view is that organisations who distribute content only in PDF format, and who do not also make this content available in another format such as RTF, HTML, or plain text, are liable for complaints under the DDA. Where an alternative file format is provided, care should be taken to ensure that it is the same version of the content as the PDF version, and that it is downloadable by the user as a single document, just as the PDF version is downloaded as a single file.

It should also be borne in mind that some content, such as graphs and maps, cannot be made accessible online to people who are blind or vision-impaired. Organisations who need to make such pictorial content available need to consider strategies for making it accessible, for example, by using qualified contractors to produce tactual maps and diagrams on request.

The Ministerial Guidelines require that information available on a website be provided in an alternative format where requested in the interest of maximising access to information.

6.4. Providing access to all of the information in a scheme

It is possible that some applicants may request all the information listed in an agency's publication scheme if they do not have access to the internet. Providing access to large amounts of information may take considerable time and resources. While a person is entitled to make such a request, it is reasonable for the agency to provide it over an appropriate period of time to ensure the agency is able to continue to perform essential functions and be fair in meeting information requests from different people.

The OIC recommends that in the first instance the agency contact the person to assist them to clarify the scope of the request – what information in particular does the person seek? In many cases it is difficult for people to know exactly where specific information they are seeking would be contained within agency information and together the applicant and agency officer can narrow the request so that the applicant receives the information they need faster and with less resources required of the agency.

¹² Note also that HREOC has published Advisory Notes on this issue: [World Wide Web Access: Disability Discrimination Act Advisory Notes](#)

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6.5. Refusal of access applications if information is available under a publication scheme

If information applied for in an access application under either the RTI Act is the same as that which appears in a publication scheme, the application may be refused under section 50 of the RTI Act. If an agency wishes to rely on this provision to refuse access, it is important that they clearly explain why they are doing so and provide clear instructions as to how to access the information through the alternative means. As soon as the agency identifies that specific information requested is already available, this should be communicated to the applicant early in the legislative process to allow the applicant to access the information prior to receiving a decision regarding the entire access application.

6.6. Impact of internet publication – a note of caution

For the majority of agencies, web publication is likely to be the primary means of proactively making information available. The development of the internet has allowed instant availability of information internationally. This provides significant advantages, both to agencies and the community, in terms of cost, convenience, timing, and availability to a broad audience. However, agencies need to fully consider its implications in developing their schemes. In particular, it should be noted that:

- Web publication alone is not sufficient in all circumstances. There are additional obligations to provide information in other formats to facilitate accessibility (see below).
- Once documents are published on the web, archiving technology means they are effectively available forever. Once documents are published online, they are permanently available and may be republished in other media. Unlike paper documents, on-line electronic documents can be transmitted and received almost instantly, stored and copied at negligible cost, and searched by keyword, name or phrase. Information can be extracted from them and combined with other information with little effort. This information can then be used in ways which were not previously possible, or were impractical due to time constraints or financial considerations.
- There are significant potential privacy implications for individuals as the protections afforded by 'practical obscurity' are removed. Where it was once necessary to visit libraries, court rooms or newspaper archives to find out information about individuals, electronic access involves no such practical difficulties. Such access has been said to 'abolish the often protective barriers of time and space that made generally open access socially acceptable'¹³.

¹³ Senator Chris Puplick, then Privacy Commissioner of NSW, *Justice: Now Open to Whom?* address to Annual Conference: Industrial relations Commission and Compensation Court (Sydney, 2 and 16 May 2002)

Proactive Disclosure and Publication Schemes

6.7. *Published information and information in libraries*

In addition to publication obligations arising out of the RTI Act and Queensland Government policies, agencies have ongoing obligations to provide printed copies of Government 'books' and other material to both the State Library of Queensland and to the National Library. Such deposits must be made within one month of publication. These obligations are contained in the *Libraries Act 1988* (Qld)¹⁴ and the *Copyright Act 1968* (Cth)¹⁵ respectively. The effect of these provisions is that copies of some documents published in publication schemes must be made available to the State Library of Queensland, and the National Library in Canberra.

6.8. *Information Standards*

Queensland Government agencies must ensure that their operations are consistent with the mandatory principles of the Queensland Government Information Standards, standards the Department of Public Works states 'assist Government agencies by defining and promoting best practice in the acquisition, development, management, support and use of the information systems and technology infrastructure which support Queensland Government business processes and service delivery'. The Information Standards are implemented under the *Financial Administration and Audit Act 1977* and it is compulsory for agencies to which the FAAA applies to comply with them. For other agencies, the information standards are a practical and useful resource to guide information management.

Information Standards of particular relevance to best practice publication schemes include: *Information Standard 26 - Internet*, *Information Standard 33 - Information Access and Pricing* and *Information Standard 40 - Record Keeping*.

Information Standard 26 'outlines the minimum requirements for Queensland Government agencies in the creation, implementation, and management of agency Internet sites for the delivery of information and services to the Queensland community'. Amongst other things, it deals with:

- consistent website experience,
- website accessibility and usability (including recognizing the physical or visual disabilities or impairments by compliance with World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (V1.0))
- recognising the literacy and language needs of clients
- ensuring that web page design minimises download times and provides access to commonly used technologies and devices
- record keeping and security processes for the maintenance of internet sites

¹⁴ See sections 68 and 70.

¹⁵ See section 201.

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- ensuring the currency, accuracy, suitability and quality of internet site information through the implementation of authorisation and monitoring processes
- ensuring consistency with regulatory and legislative requirements including the *Public Records Act 2002*, the *Anti-Discrimination Act 1991* and relevant Government Information Standards when managing web records
- ensuring processes are in place to manage client feedback and information requests
- notifying the Queensland Government Gateway and major stakeholders of referring sites of new or significantly redeveloped websites
- website consistency, reflecting the requirements of the Consistent User Experience (CUE) Standard.

The OIC recommends that agencies that are not bound by the Information Standards take such issues into account and comply with similar requirements.

7 Providing the information

People should be able to access information that the agency produces without needing to know about a publication scheme. Information should be accessible via the agency's website or by contacting the agency by phone, email, letter or in person.

7.1. Timeframes

The RTI Act does not provide timeframes for responses to requests for information provided in publication schemes if people are unable to access material on agency websites. However, it should be provided within a reasonable time frame and be consistent with agency performance targets. Failure to provide timely information may increase the number of applications for access under the RTI Act.

7.2. Fees and charges

A publication scheme should make the maximum amount of information readily available at minimum inconvenience and cost to the public. Agencies may charge for information for which a charging regime already operates (e.g. for criminal history information). Agencies should bear in mind that in most cases, information requested by the public (for example, in the form of annual reports etc) is generally provided at no charge. Its online availability should not penalise those without online access and other difficulties in accessing the internet.

However, it is recognised that it may be reasonable to charge in some cases, for example, where a person makes repeated requests for the same information or information where copies cost the agency a lot to reproduce.

Proactive Disclosure and Publication Schemes

Any charges should be justified and limited to the actual cost of provision, ie postage, photocopying, costs of supervision etc. Charges which are consistent with access costs outlined in the RTI Act would in most cases be reasonable. Any costs should be clearly set out in the publication scheme.

8 Reviewing and maintaining publication schemes

8.1. *How long should information be maintained on the website?*

The Ministerial Guidelines state:

Publication Schemes should be regularly reviewed to ensure information on the publication scheme is current and up to date.

Each agency should implement procedures to ensure that new information covered by the publication scheme is available and that any outdated information is replaced or archived.

Information placed on a website is governed by the Retention and Disposal Schedules published by Queensland State Archives under the *Public Records Act 2002*. Agencies should consult these schedules, as well as additional schedules developed for their own organisation, in deciding how long material should be maintained.

Note, however, the comments of the Australian Library and Information Association, which has stated;

Any Government agency that publishes information has a responsibility to ensure that it remains accessible to the Australian public for the long-term. However it is clear in the current environment that policies on persistent URLs and archiving have not been addressed. Current information must be accessible so that the public can use government services and participate in public debate. Historical or non-current information is equally important particularly for research purposes and must be made available for legal, cultural and historical reasons.

Under Information Standard 40 (IS40) - Record-Keeping, agencies are required to:

- comply with legal, administrative, cultural and business recordkeeping requirements;
- establish and maintain reliable recordkeeping systems, and;
- ensure that full and accurate records are adequately documented, preserved and made accessible for as long as those records have value.

In keeping with these principles, publication schemes should be reviewed on an regular basis to ensure that they remain relevant, up to date and accurate, and that new material is added and outdated material archived or removed.

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The actual information contained within a publication scheme should be reviewed and maintained on a regular basis, at least every 6 months, and when the triggers set out above occur. Agencies should also have procedures to ensure that new documents covered by the publication scheme are made available and staff are aware of any changes to information.

It may be advisable when reviewing a publication scheme to consult with a cross section of stakeholders on the contents, and take their comments into account in revising and developing the schemes. Agency websites should invite feedback on publication schemes, which should be taken into account in its continuous review. Agencies may also offer subscription services on particular issues to those who are interested, as set out in the *Right to Information* Report. It is also recommended that staff with an understanding of the RTI Act be involved in the reviewing the guide and the operation of the scheme.

Agencies should ensure that information and records management staff and privacy officers are consulted during the design of new forms, systems and databases so that proactive release of information can be addressed at an early stage.

9 Complaints and non-compliance

9.1. Complaints to agencies

The Ministerial Guidelines require:

Each agency is to implement a complaints procedure which sets out how to make a complaint when information included in the publication scheme is not available.

Such information should be clearly set out within the publication scheme, including contact details to address a complaint to the agency.

If you have any comments or suggestions on the content of this document, please submit them to feedback@oic.qld.gov.au

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Changes to legislation after the above date are not included in this document.