



## Applying the legislation

*Right to Information Act 2009 and Information Privacy Act 2009*

### Documents of an agency and documents of a Minister

The *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup> applies to documents of an agency and documents of a Minister. This guideline will help decision makers identify when a document is a document of an agency or a document of a Minister.

#### Social media, webmail and text messages

For detailed guidance on dealing with these, refer to the guideline [Online and on your phone: access applications for social media, webmail and text messages](#)

#### What is a document?

*Documents* are not just paper. They include any other material with writing or meaningful marks, symbols or figures on it, and any disc, tape or other article from which images, writing or messages can be produced.<sup>2</sup>

#### Draft Documents

The RTI Act does not distinguish between draft documents and final documents.<sup>3</sup> If an in-scope document is a document of an agency (or of a Minister) it must be processed. Drafts cannot be excluded unless the applicant agrees.

#### Documents of an agency

Under the RTI Act an agency is a Queensland Government department, local government, or public authority. A document of an agency includes any document the agency is entitled to access or which is in the agency's physical possession or legal control<sup>4</sup>, as long as it is not a document to which the RTI Act does not apply<sup>5</sup>.

#### Example

An agency is entitled to access:

1. Documents provided to a legal services provider for the purposes of seeking advice.<sup>6</sup>

<sup>1</sup> And Chapter 3 of the *Information Privacy Act 2009* (Qld) (**IP Act**); references to the RTI Act in this guideline include the right of access in Chapter 3 of the IP Act.

<sup>2</sup> schedule 1 of the *Acts Interpretation Act 1954* (Qld)

<sup>3</sup> Public Records Act requirements distinguish between drafts and final versions of records, providing for different retention periods, but this is different from documents under the RTI Act.

<sup>4</sup> Section 12 of the RTI Act.

<sup>5</sup> As set out in Schedule 1 of the RTI Act.

<sup>6</sup> See [Agency documents held by third party legal providers](#) for more information.



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2. An official work notebook or diary of an employee that the employee has taken outside the workplace, including for example, an employee on long service leave that has their work notebook or diary at home.
3. Documents provided to an audit services provider for the purposes of an internal audit conducted by an external provider.
4. Documents provided to a debt collector retained to recover monies owed to the agency.

In these cases, the agency must contact the person or organisation and retrieve the documents so they can process them as part of the application.

## Documents of a Minister

Under the RTI Act a document of a Minister is a document which relates to the affairs of an agency and is in the Minister's physical possession or legal control or one which the Minister is entitled to access<sup>7</sup>. It does not include a document of an agency or a document to which the RTI Act does not apply.

### Assistant Ministers

*Minister* in the RTI Act includes an Assistant Minister. Documents of an Assistant Minister can also be applied for under the RTI Act and Assistant Ministers are able to give directions under the RTI Act for their applications to be dealt with by another person.

A document of a Minister also includes a document in the possession, or under the control, of a member of staff of, or a consultant to, the Minister in the person's capacity as member or consultant.<sup>8</sup>

### Documents of an agency are not documents of a Minister

While *document of a Minister* includes a document the Minister is entitled to access, the definition explicitly excludes a document of an agency. Any documents in the possession of an agency are documents of that agency; they cannot be documents of a Minister, regardless of the Minister's entitlement to access them.

Only documents that relate to the affairs of the agency can be a document of a Minister. A document will relate to the affairs of an agency where it bears a direct or indirect relationship to:

- the business and activities of an agency
- the agency's area of governmental responsibility; or
- arrangements between government departments and other agencies and external entities.<sup>9</sup>

<sup>7</sup> Section 13 of the RTI Act.

<sup>8</sup> Section 13(b) of the RTI Act.

<sup>9</sup> *Frecklington, MP and Premier and Minister for Trade (No. 2)*



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This means it is necessary to consider the kind of information the documents contain.

In *Frecklington, MP and Premier and Minister for Trade (No. 2)*<sup>10</sup> (Frecklington No 2) the Commissioner considered whether a Ministerial staff member's browser history related to the affairs of an agency. Browser history is an unintentionally and automatically generated list of URLs, being an unreliable record of resources accessed by a user, which may potentially contain times and dates but no detail of the information on the webpage visited.<sup>11</sup> Having regard to the general character and content of web browser histories and their lack of 'meaningful content' the Commissioner<sup>12</sup> did not consider the browser history requested by the applicant had any direct or indirect relationship to the affairs of an agency.

If the information does not relate to the affairs of an agency it will not be a document of a Minister, even if it is in the possession or control of the Minister or the Minister is entitled to access it. Examples include:

- party political matters
- matters related to the electorate
- details of activities relating to the Minister's activities as a Member of Parliament
- details of activities relating to the Minister's personal life or activities.

**Examples**

A Minister has several papers in a folder on their desk:

1. A brief from the department about results of consultation conducted in relation to proposed legislation.
2. The minutes of the last party political meeting.
3. A draft response to a letter from a constituent in the Minister's electorate about a matter related to a Commonwealth service.
4. A consent form for the Minister's child to go on a school excursion.
5. A note of a phone message from a family member, including details of a personal appointment.

Only the first document relates to the affairs of the agency and is a document of the Minister. The rest do not, and cannot be applied for under the RTI Act.

**Mixed documents**

In the case of a mixed document, containing, for example, information related to both the Minister's electorate and the affairs of the agency, it will be document of a Minister.

<sup>10</sup> [2020] QICmr 26 (12 May 2020)

<sup>11</sup> Hon Tim Smith MP v Hon Daniel Andrews MP (Premier) (Review and Regulation) [2017] VCAT 340, adopted in *Frecklington (No 2)* (Smith v Andrews)

<sup>12</sup> Adopting the reasoning in *Smith v Andrews*)



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## Possession or control

A document is in the possession of an agency or Minister (or the Minister's consultant or staff member) if it is in their physical possession. A document is in the control of an agency or Minister if they have a legal right to control the document.<sup>13</sup>

For a detailed discussion on physical possession and legal control, please refer to the [Annotated Legislation](#).

## Revision Points (eDRMS)

Many Electronic Document Records Management Systems (eDRMS) include a functionality which shows the history of individual documents, for example a revision history, showing who has revised documents and when. This functionality usually creates a snapshot of what the document looked like at a specific point in time, allowing the system to recreate a past version.

Doing so, however, does not retrieve an existing document; it creates a *new* document, reconstructed from the data held in the revision history. As such, given RTI applications apply only to documents that exist on the day the application is made<sup>14</sup>, these will generally<sup>15</sup> not be in scope of an access application.

For additional information and assistance please refer to the OIC's other guidelines and information sheets or contact the Enquiries Service on 07 3234 7373 or email [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au).

**This guide is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.**

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

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*Changes to legislation after the update date are not included in this document*

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<sup>13</sup> See 46 and Queensland Police Service [2020] QICmr 3 (4 February 2020) at paragraphs [42] – [47]

<sup>14</sup> Section 27 of the RTI Act.

<sup>15</sup> Note that the revision history would constitute metadata of the document. If someone applied for a document's metadata under section 28 of the RTI Act (or 48 of the IP Act) and the document had a revision history, that revision history would need to be considered.