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## Information Sheet

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

### What does it mean if you are consulted as a third party?

This information sheet will assist people who have been consulted by a Queensland government agency about releasing information under the *Right to Information Act 2009* (Qld) (**RTI Act**) or the *Information Privacy Act 2009* (Qld) (**IP Act**). It will also assist people who have been consulted by the Office of the Information Commissioner (**OIC**) as part of an external review.

#### What is right to information?

The RTI Act<sup>1</sup>, which replaced the *Freedom of Information Act 1992* (Qld), requires Queensland government agencies<sup>2</sup> to release information to applicants unless there is a good reason not to. Anyone (including a company) can apply to access government documents.

#### Why have I been consulted?

Under the RTI Act, an agency has to take all reasonable steps to consult with a third party when:

- it receives an access application under the RTI Act
- it is thinking about releasing a document; and
- the document has information in it that could reasonably be of concern to the third party if it was released.

OIC, as part of conducting external reviews of agency decision, may also consult with third parties, including with people who were not initially consulted by the agency.

#### What am I being consulted about?

You are only being consulted about two things:

- is the document one to which the RTI Act does not apply; and
- is the information exempt or contrary to the public interest to release?

Your views are not being sought about any other matter relating to the application and you can only provide your views on documents you were actually consulted on. If you provide your views on other issues or documents, for example the scope of the application or whether information is irrelevant, the RTI Act does not require the agency to take them into account.<sup>3</sup>

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<sup>1</sup> Any references to the RTI Act in this information sheet also refer to the IP Act.

<sup>2</sup> In this information sheet, references to an 'agency' include Ministers, unless otherwise specified.

<sup>3</sup> 6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party) [2016] QICmr 8 (24 February 2016)



### **What if there are documents I wasn't consulted about?**

Under the RTI Act, if an agency should have consulted you but did not, you can seek a review of the failure to consult. If you have reasonable grounds to believe that the agency holds documents that would be of concern to you that you have not been consulted on, you should discuss this with the decision maker. You may not have been consulted because the agency is not considering releasing those documents.

If you believe there are documents being released that you were not consulted on, you have the right to seek a review of the decision. It is important to exercise these review rights as quickly as possible, before documents are actually released.

### **Can I find out who applied for the information?**

In some circumstances, the identity of the applicant may impact your views about whether it is contrary to the public interest to release the documents; in others, it will be irrelevant. If the agency is not able to tell you the applicant's identity they should be able to tell you what sort of applicant they are, for example, whether they are a member of a community group, a concerned citizen, or a member of the media.

If you are consulted by OIC during an external review, the identity of the applicant may form part of the review process.

### **How long do I have to respond to the consultation?**

The agency will give you a reasonable opportunity to respond to the consultation, based on your circumstances and the complexity of the information. If you have concerns about the timeframe given, raise them with the agency as soon as possible.

### **How can I object to the proposed disclosure?**

You must tell the agency that you object to the disclosure and, where possible, this should be communicated in writing. Your objection should set out the information you think should not be released and your reasons why, detailing the exempt information provisions or public interest factors you think are relevant.

### **Exempt information**

Information is exempt if it falls into one of the categories listed in [Schedule 3 of the RTI Act](#). This includes information which is confidential, legally privileged, or could endanger a law enforcement investigation. OIC has a [number of guidelines which discuss exempt information](#).



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## Contrary to the public interest information

Information which is not exempt is subject to the public interest balancing test. This is where an agency identifies relevant public interest factors for and against disclosure and balances them to decide whether it would be contrary to the public interest to release the information. The public interest factors are listed in [Schedule 4 of the RTI Act](#).

See the *What is the Public Interest*<sup>4</sup> guideline for more information.

### Example

The Council consults with you on a complaint letter you sent in about your neighbour's fence. You believe the letter is private because it has your personal opinions and details in it. If you object to its disclosure, you could refer to the public interest factors that relate to privacy, such as schedule 4, part 3, item 3 and part 4, item 6.

## What if I don't object?

You are not required to advise the agency if you don't object to the information being released, but it may assist the decision maker if you let them know.

If you have no objections to the disclosure of the information, the agency decision maker will proceed to make a decision in accordance with the RTI Act. It is unlikely that you will be contacted again.

## What happens after I object?

The agency<sup>5</sup> will consider your views and any objections you raised and take them into account when making their decision (unless your views fall within one or more of the RTI Act's irrelevant factors).

If the agency **decides not to release** information you objected to they will give the applicant a decision stating that the agency has refused access to the information. The agency may also notify you of the decision. The applicant will then have 20 business days to seek a review of the decision to refuse access.

If the agency **decides to release** information contrary to your views, the agency will give you a decision notice with reasons for the decision and your review rights. Note that, even though the agency has decided to release information over your objections, the applicant will not actually be given a copy at this stage.

Access to those documents you objected to will be deferred until the time for you to exercise your review rights has passed.

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<sup>4</sup><https://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/what-is-the-public-interest>.

<sup>5</sup> If you are consulted as part of the external review process, OIC officers will give you an opportunity to provide your views.



Office of the Information Commissioner  
Queensland

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## Do I have any right to review the decision?

Yes, you can apply for a review of the decision to release documents contrary to your objection. You must do so within **20 business days** from the date of the decision notice. If you do not lodge a review application within the 20 business days the agency can give the documents to the applicant.

You also have 20 business days to apply for a review if you believe the agency should have consulted you on a document and they did not. You should do so as quickly as possible, however, to ensure documents of concern are not released before you exercise your review rights.

Please see *Explaining your review rights – a guide for applicants*<sup>6</sup> for more information.

## Disclosure logs

Some documents released under the RTI Act can be published on the agency's website as part of their Disclosure Log.<sup>7</sup> Not all information will be included, for example information that would unreasonably intrude on an individual's privacy must not be included in an agency's Disclosure Log.

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

This information sheet 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).

*Published 30 June 2015 and last updated 15 May 2017.*

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

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<sup>6</sup> Available on OIC's website: <https://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/explaining-your-review-rights-a-guide-for-applicants>

<sup>7</sup> A disclosure log is a web page or a document that provides details of RTI applications and makes available to the public the documents that have already been released.