



Applying the legislation

GUIDELINE *Right to Information Act 2009*

Applications for public service recruitment documents

The *Right to Information Act 2009*¹ (Qld) (**RTI Act**) allows anyone to apply for documents held by a Queensland government agency.² This includes documents received or created as part of a workplace recruitment process. This guideline explains the issues and public interest factors which generally arise in relation to access applications for public service recruitment documents.

Recruitment feedback

Most government agencies will provide feedback to unsuccessful candidates for government positions. However, this does not prevent those unsuccessful candidates from applying to access documents relating to the recruitment and selection process, regardless of whether they have sought feedback.

Information about unsuccessful candidates

Information about unsuccessful candidates, including their identities, will generally be contrary to the public interest to release. This includes information that would identify them.

Identifiability

In *United Firefighters' Union Queensland and Queensland Fire and Emergency Services*³, the applicant sought access to the ID Numbers that the agency assigned to all candidates who participated in five particular firefighter recruit training courses. The Commissioner upheld the agency's decision that the ID numbers were personal information⁴ that was contrary to the public interest to release.

The fact that someone has applied for a job, including a public service job, is their personal information. It raises the privacy⁵ and personal information⁶ public interest factors against disclosure (the privacy factors).

If they are not successful, ie they are not appointed to the public service role, their privacy interests are not diminished against an applicant.⁷ This does not apply to

¹ And the *Information Privacy Act 2009* (IP Act) (Qld); references to the RTI Act include the IP Act unless otherwise specified.

² In this guideline, an agency includes a Minister.

³ [2021] QICmr 3 (5 February 2021) (*United Firefighters Union*).

⁴ See the discussion at paragraphs 48-60, *United Firefighters Union*.

⁵ Schedule 4, part 3, item 3

⁶ Schedule 4, part 4, item 6

⁷ *Fitzpatrick and James Cook University; HigherEd Appointments* (Unreported, Queensland Information Commissioner, 6 November 2012) (*Fitzpatrick*), approving *Hawck and Department of Training and Industrial Relations* (Unreported, Queensland Information Commissioner, 31 January 1997) (*Hawck*).



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an unsuccessful candidate applying for their *own* information. Unsuccessful candidates will generally be given access to information about themselves.⁸

Information about successful candidates

In contrast to unsuccessful candidates, the privacy interests of the successful candidates will generally be reduced when they are appointed to a public service position.

Factors favouring disclosure

The public interest factors favouring disclosure that generally arise when considering information relating to successful candidates include:

- disclosure could reasonably be expected to reveal the reason for the selection panel's decision and any background or contextual information that informed the decision⁹
- disclosure could reasonably be expected to contribute to the transparency and accountability of the agency's recruitment and appointment process;¹⁰ and
- disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds¹¹.

These will generally attract a strong weighting, however the particular circumstances of each access application must be taken into account. For example, in *Poyton and Metro North Hospital and Health Service*¹² the Commissioner assigned a low weighting to these factors, due to the low level of the position, the fact that it was a temporary (six month) position, and the appointee occupied it for only six weeks, after which they left the employ of the agency.

Factors favouring non-disclosure

The factors favouring nondisclosure which usually arise are that information is the successful candidate's personal information and that disclosure could reasonably be expected to prejudice their right to privacy.

Purely private information of successful candidates

Candidates often provide large amounts of purely private information during the recruitment process. For example, candidates may provide family and personal contact details, desired remuneration, information about hobbies or details of social media accounts. This kind of information raises the privacy factors and will generally be contrary to the public interest to release, because successful appointment to a public service position does not diminish their weight.¹³

Once the successful candidate's purely private information is removed, there is generally a low weight attributed to the privacy factors for the remaining personal

⁸ *McKinnon and Department of Communities* (Unreported, Queensland Information Commissioner, 7 June 2011) (McKinnon).

⁹ Schedule 4, part 2, item 11

¹⁰ Schedule 4, part 2, item 1

¹¹ Schedule 4, part 2, item 4

¹² [2016] QICmr 50 (13 December 2016)

¹³ *McKinnon*.



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information, including, for example, work history details and selection criteria responses.¹⁴

In assessing the weight to accord to these factors favouring nondisclosure, it may be relevant to consider any policies of the agency concerning disclosure of such information. For example, were job candidates informed that the agency has a policy of disclosing certain details about the recruitment process as a matter of standard procedure?

In relation to whether releasing the successful candidate's information could reasonably be expected to prejudice the future supply of confidential information,¹⁵ the Commissioner has rejected this factor, given that someone who is genuinely interested in a position would not be deterred from applying simply because their application may be open to scrutiny in the event they were appointed to the position.¹⁶

The Commissioner also found¹⁷ that disclosing the information could not reasonably be expected to prejudice an agency's management function or its conduct of industrial relations.

Other useful decisions

- *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018)
- *G66 and Department of Justice and Attorney-General* [2019] QICmr 35 (29 August 2019)
- *G83 and Queensland Police Service* [2019] QICmr 47 (5 November 2019)

For additional information and assistance please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email 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.

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

¹⁴ *Fitzpatrick*.

¹⁵ Schedule 4, part 3, item 16.

¹⁶ *Hawck*.

¹⁷ *Antony*, decided under the repealed FOI Act, noting that there was no reasonable basis for expecting that disclosure could damage the morale of participants or cause them undue stress, let alone to a level that would qualify as a substantial adverse effect.