



Applying the legislation

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

Evidence of identity and authority

Under the *Right to Information Act 2009* (Qld) (**RTI Act**) if an application includes any documents containing the applicant's personal information then the applicant must provide evidence of their identity. Under the *Information Privacy Act 2009* (Qld) (**IP Act**), *all* applications must be accompanied by the applicant's evidence of identity.¹

If the applicant nominates someone to make an application for documents containing the applicant's personal information on their behalf—called an agent—the agent must also provide evidence of identity, along with evidence of their authority to act as an agent for the applicant.²

Personal information only

These requirements only apply if the application is to access or amend documents that contain the applicant's personal information.³

There is no obligation to provide evidence of identity or agent authorisation if an RTI application does not involve the applicant's personal information.

What is a valid form of ID?

The RTI and IP Act accept the same kinds of identity documents for the applicant and the agent. Valid forms of ID under the RTI and IP Act are documents '*verifying the person's identity*'⁴. This includes:

- a passport
- a copy of a birth certificate or extract
- a driver licence
- a statutory declaration from an individual who has known the person for at least one year
- for a prisoner: a copy of a prisoner's identity card that is certified by a Corrective Services officer.

¹ Sections 43(3) and 44(5) of the IP Act.

² Sections 24(3)(a) of the RTI Act.

³ See section 12 of the IP Act which sets out the definition of *personal information*.

⁴ As defined in the *Right to Information Regulation 2009* and the *Information Privacy Regulation 2009* (**RTI and IP Regulations**).



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This list is not exhaustive and other documents may also satisfy the requirement to provide evidence of an applicant's or agent's identity, such as an adult proof of age card. In some cases, a letter printed on the law firm's letterhead and signed by the principal of the firm may be sufficient to verify a legal representative's identity as the agent.

Evidence of agent's authority

Documents that will establish an agent's authority may include⁵:

- a will or court order appointing the agent to act as the applicant's guardian
- the client agreement authorising a legal practitioner to act for an applicant
- evidence the agent is the child's parent⁶

This not an exhaustive list and other documents can establish an agent's authorisation.

Examples

- A letter of authority from the applicant specifically appointing the person to act as the applicant's agent to make the application.
- In the case of a legal representative, a letter of authority setting out the nature, terms and duration (where relevant) of the legal representative's authority which is signed by the legal representative and their client (the applicant).

Generally, evidence of an agent's authority should:

- be in writing
- be current⁷
- state the full name of the applicant and the name of the agent
- set out the scope of the authority to act as the applicant's agent; and
- be signed and dated by the applicant.

Ways of providing evidence of identity and authorisation

Original identification sighted by agency

If the agency has public facing offices, the original identification documents could be shown to an agency officer, who could make a file note confirming the original

⁵ See section 23(3)(b) of the RTI Act and section 43(3)(b) of the IP Act.

⁶ If the application is made by a parent for a child, under section 25 of the RTI Act or section 45 of the IP Act, please see *Applications by and for children* for more information.

⁷ OIC recommends that authorities older than 6 months be verified to ensure they are current prior to accepting them.



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document has been sighted. There is also an area on the application form where the officer and confirm the original identification was sighted.

There is no need to photocopy the evidence of identity document, however, the agency may wish to take a copy of any agent authorisation.

Certified copies

The most common method of providing evidence of identity is by way of a certified copy. A photocopy of the evidence of identity document must be certified as a correct copy of the original by a 'qualified witness' which means a Justice of the Peace, lawyer, Commissioner for Declarations or notary public.⁸

Under **no circumstances** can a qualified witness certify their own identification.

Note

The only exception to the 'qualified witness' requirement is where the evidence of identity is a prisoner identity card. These will be certified by a corrective services officer and not a qualified witness.

There is no requirement for a copy of an agent's authority to be certified by a qualified witness.

Providing electronic copies

The RTI Act and the IP Act do not specify how copies of evidence of identity documents are to be given to an agency. If the agency allows, they can be provided electronically, such as by email or fax.

The *Electronic Transactions (Queensland) Act 2001*⁹ provides that where a State law requires or permits the production of a paper document an electronic version may be provided if the following conditions are met:¹⁰

- The method used to produce the electronic copy of the document ensures the integrity of the document's information, ie the information is complete and unaltered, apart from immaterial or endorsed changes.
- The information in the electronic document will be readily accessible for subsequent reference.
- The person the paper document is to be given to agree to receive an electronic copy of the document.

⁸ Except for applicants who are incarcerated and providing a copy of their prisoner identity card which can be certified by a corrective services officer.

⁹ Section 16 of the *Electronic Transactions Act 2001 (Electronic Transactions Act)*.

¹⁰ The Electronic Transactions Act does not apply to particular requirements and permissions, including that a document "be attested, authenticated, verified or witnessed by a person other than the author of the document" (section 7A and schedule 1 of that Act).



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It is up to each agency to decide whether it is appropriate to accept identity documents electronically, taking into account any general restrictions about receipt of sensitive personal information documents. However allowing these documents to be provided electronically can help simplify the application process.

Dealing with a second agent

On some applications that have an applicant and agent, or child and parent, the agent or parent will ask someone else to deal with the agency. This 'second agent' will often be a lawyer, but not always. Sometimes, particularly in the case of a parent applying on behalf of a child, it may be another family member.

There is nothing in the Act that prevents this. For these applications, agencies will need to first satisfy the identity and authority requirements of the Act in relation to the applicant and agent or parent and child. Then they will need to decide, as a matter of policy, what they require to satisfy themselves that the second agent is properly authorised to represent the parent or agent.

Where the applicant is a child, written confirmation from the parent that the second agent is acting for them may be sufficient. Where the applicant is an adult, the agency may want confirmation from the applicant as well as the first agent that the second agent is authorised to deal with the agency in relation to the application. Where the second agent is a lawyer, confirmation on firm letterhead that the lawyer is acting for the agent or parent may be enough to satisfy the agency.

Application is noncompliant

If any of the aspects of the evidence of identity and authority do not satisfy the legislative requirements (for example, the copy of evidence of identity is not certified or the agent's authorisation has not been suitably established) then the agency should follow the noncompliant application process. Refer to [Noncompliant Applications](#) for more information.

Applications for access to non-personal information

If the application does not seek access to documents containing the applicant's personal information:

- the applicant does not need to provide evidence of their identity; and
- an agent does not need to provide evidence of identity or evidence of authority to act for the applicant.

However, if an agent applies for sensitive information about the applicant, such as confidential information about the company that they claim to be acting for, and the agency has concerns about the agent's authority to act, then those concerns may be into account when making the access decision.



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Before doing so, however, it would be reasonable for the agency to speak with the agent explaining those concerns, the possible ramifications on the decision and ask them to provide proof of their authority to act for the applicant. However, the agent is not required to provide evidence of authority, and the application will be valid even if they refuse, as it is not a requirement of the RTI Act.

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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