



Office of the Information Commissioner  
Queensland

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## Information Sheet

INFORMATION SHEET – *Right to Information Act 2009*

### Neither confirm nor deny the existence of documents

**My letter from the agency<sup>1</sup> says that it neither confirms nor denies the existence of the documents I asked for – what does this mean?**

This means the agency has considered your application and decided that they cannot deal with it in the usual way. This may be because of what you have asked for, or how you have asked for it, and therefore the agency is not able to tell you whether or not the documents you have asked for exist.

When an agency makes a decision of this kind, it may or may not hold documents of the type you have asked for.

#### **Is the agency allowed to do this?**

Yes. The *Right to Information Act 2009* (Qld) (**RTI Act**) permits an agency to respond in this way to an access application, but the Information Commissioner has explained that it is to be used only in specific and very limited circumstances.

The RTI Act generally requires documents to be given to an applicant unless a specific exemption or exception applies to the information contained within a document. However, very rarely, an agency may need to make a 'neither confirm nor deny' decision due to the particularly sensitive circumstances relating to the application. In many cases the agency will not be able to explain their decision in a meaningful way because to do so would reveal sensitive information about the existence or non-existence of the documents sought.

#### **When can an agency make this sort of decision?**

An agency can make a 'neither confirm nor deny' decision when they believe that:

- if no documents existed, explaining that to you could reveal information which would generally not be released under the RTI Act
- if the documents did exist, the agency would have legitimate reasons to refuse access, but explaining that to you would reveal the information they are trying to protect.

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<sup>1</sup> In this information sheet, references to an 'agency' include Ministers, unless otherwise specified.



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**Example**

An application is made for “*the investigation report regarding the sexual harassment complaint made by Ms X against Mr Y (an agency officer)*”.

The agency knows, just from reading the application, that the document sought, if it existed, would contain Ms X and Mr Y’s personal information, the release of which would (in almost all circumstances) be contrary to the public interest. In addition, if the agency acknowledges that it holds the report, even if it does not release the information, it would confirm that it had received a sexual harassment complaint from Ms X against Mr Y. The fact that a specific complaint had been received against a named person or made by a named person is a type of information that would generally not be released under the RTI Act or IP Act.

**What if I don’t agree with the decision?**

If you don’t agree with the agency’s decision, you have the right to apply in writing for an internal review within 20 business days of the date of the decision notice.

An internal review is conducted by another person within the agency. If you disagree with the outcome of the internal review, you may then apply in writing to the Office of the Information Commissioner for an external review.

Alternatively you may skip the internal review process and apply for an external review straight away.

Applications for an external review must be made in writing to the Office of the Information Commissioner within 20 business days from the internal review decision or the date of the agency’s original decision.

**More information**

The relevant section of the RTI Act is included at Appendix A of this information sheet.

For additional information and assistance please refer to the Guideline *Neither confirm nor deny the existence of documents* (for agencies) and other OIC guidelines, or contact the Enquiries Service on 07 3234 7373 or email [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au).



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## Appendix A

### Section 55 of the RTI Act

#### Information as to existence of particular documents

- (1) Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing prescribed information.
- (2) For an access application for a document containing prescribed information, the agency or Minister may give a prescribed written notice that does not include the details mentioned in section 191(a) or (b) but, by way of a decision, states that:
  - (a) the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or a document of the Minister; but
  - (b) assuming the existence of the document, it would be a document to which access would be refused under section 47(3) to the extent it comprised prescribed information.
- (3) The prescribed written notice may be given in a schedule of relevant documents.
- (4) To avoid any doubt, it is declared that a decision that states the matters mentioned in subsection (2) is a decision refusing access to a document under section 47.

#### *Note*

*A decision refusing access to a document under section 47 is a reviewable decision see schedule 5, definition reviewable decision, paragraph (e).*

**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 [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au)

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