



Applying the legislation

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

Exempt information: Crime and Corruption Commission

The *Right to Information Act 2009*¹ (Qld) (**RTI Act**) gives people the right to access documents in the possession or control of Queensland government agencies². This right of access is subject to some limitations. These limitations include information which is exempt from release and information which would, on balance, be contrary to the public interest if released.

Exempt information

Exempt information is information that Parliament has considered would, on balance, be contrary to the public interest to release. Schedule 3 of the RTI Act lists the types of information that are exempt information.

The RTI Act is not, however, intended to prevent or discourage the giving of access to exempt documents. It remains open to an agency or Minister to give access under the RTI Act to exempt documents sought in an access application.³

CCC exempt information provision

Schedule 3, section 10(4) of the RTI Act provides that information is exempt if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performance of the prescribed functions of the prescribed crime body. A 'prescribed crime body' is defined in the RTI Act as the Crime and Corruption Commission (**CCC**).⁴

This exemption is referred to as the CCC exempt information provision.

Exception to the CCC exempt information provision

The only exception to the CCC exempt information provision is where the investigation has been finalised *and* the information applied for is about the applicant.⁵ Generally, information will be 'about' the applicant where they are the *subject* of the relevant investigation.

¹ Chapter 3 of the *Information Privacy Act 2009* (Qld) also gives a right of access, but it is limited to documents containing the applicant's personal information.

² In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

³ Section 48(3) of the RTI Act.

⁴ It also includes the former Criminal Justice Commission and the former Queensland Crime Commission.

⁵ See schedule 3, section 10(6) of the RTI Act.



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In *G8KPL2 and Department of Health*⁶ the applicant contended that the report in issue was about him as he was the complainant. However, the Right to Information Commissioner decided that, while the Report came into existence as a result of the applicant's complaint, the Report was not *about* the applicant.⁷

Information obtained, used or prepared

The terms 'obtained, used or prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) and so the Information Commissioner has given the words their ordinary meaning.

In *Springborg, MP, and the Crime and Misconduct Commission*⁸ (Springborg) the Information Commissioner said that 'prepared' in the equivalent section of the now repealed *Freedom of Information Act 1992* means 'compose and write out, draw up (a text or document) ... produce or form ... manufacture, make' as set out in the *New Shorter Oxford Dictionary*.

Investigation

'Investigation' is not defined in the RTI Act. The Information Commissioner has said that investigation in this context has the same meaning as in the *Crime and Corruption Act 2001*⁹ (CC Act). Schedule 2 of the CC Act defines investigation as '*examine and consider*'.

Prescribed crime body or another agency

The CCC exempt information provision refers to prescribed crime bodies and to other agencies. Section 46 of the CC Act allows the CCC to refer matters to the agency to investigate, subject to CCC's monitoring role.¹⁰ In these circumstances information *obtained, used or prepared* for the investigation by the agency will be subject to the CCC exempt information provision, as the agency has taken on the role of investigator.

In *G8KPL2 and Department of Health*¹¹ the applicant applied for a Report prepared by the Department's Ethical Standards Unit (ESU) following the applicant's complaint about the conduct of hospital staff. The Department refused access to this document under schedule 3, section 10(4) and the applicant applied for external review.

⁶ (Unreported, Queensland Information Commissioner, 31 January 2011) [29 and 30].

⁷ [32]. This approach has since been affirmed by the Information Commissioner in *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012); *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) and *Dickinson and Queensland Police Service* [2014] QICmr 30 (20 June 2014).

⁸ (2006) 7 QAR 77 [27].

⁹ *Springborg* [55-59], referring to the *Crime and Misconduct Act 2001* as it was previously called.

¹⁰ In some cases, the agency will need to provide the CCC with a detailed report on the outcome. For more information refer to the CCC's '[Procedures for dealing with complaints about corruption](#)'.

¹¹ (Unreported, Queensland Information Commissioner, 31 January 2011).



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OIC found the Department had notified the then CMC of the complaint and that it had been referred back to the Department, subject to the then CMC's monitoring role; the Department's ESU investigated the allegations, prepared the Report, and notified the then CMC of the investigation outcome.

On external review the Right to Information Commissioner decided the Report was prepared for an investigation by another agency in the performance of the prescribed functions of the prescribed crime body and was therefore exempt under schedule 3, section 10(4).

In performance of its prescribed functions

The prescribed functions of the CCC are defined in schedule 3, section 10(9) of the RTI Act as its crime, intelligence and corruption (this includes police misconduct) functions. Chapter 2 of the CC Act specifies the content of each of these functions.

The former Crime and Misconduct Commission

The CCC used to be the Crime and Misconduct Commission (CMC), which had a function of investigating official misconduct. It was replaced with the CCC's corruption function, which is more narrowly defined but includes both corrupt conduct and police misconduct.¹²

Historical information that was obtained, used or prepared for an investigation by the CMC, or an agency action on referral from the CMC, can be exempt from disclosure under schedule 3, section 10(4) of the RTI Act. The exemption can apply to information obtained, used or prepared for an investigation into complaints about police misconduct because such investigations are within the scope of the CCC's corruption function. Matters involving official misconduct are also likely to come within the CCC's corruption function as per the definition of corrupt conduct in section 15 of the CC Act.

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

¹² By the *Crime and Misconduct and Other Legislation Amendment Act 2014*.