



Information Sheet

Right to Information Act 2009 and Information Privacy Act 2009

Legal professional privilege – a guide for applicants

The *Right to information Act 2009 (RTI Act)* and *Information Privacy Act 2009 (IP Act)* allow people to access documents held by Queensland government agencies. However, this right of access is subject to some limitations. This includes *exempt information*, to which an agency can refuse access.

One category of exempt information is information subject to legal professional privilege (LPP). While LPP can be a complex area of law, the main principles are explained below.

What is LPP?

LPP protects the confidentiality of communications between a lawyer and their client. It ensures people can get legal advice, or assistance in legal proceedings, knowing that information they share in confidence with their lawyer will not be disclosed.

For information to be subject to LPP it must be a communication between a lawyer and client that meets the following tests. It must be:

- (1) made in the course of a lawyer/client relationship (in some circumstances, communications with third parties can be protected)
- (2) confidential and remain confidential; and
- (3) made for the dominant purpose of:
 - a) seeking or providing legal advice (known as ‘advice privilege’); or
 - b) to be used in existing or reasonably anticipated legal proceedings (known as ‘litigation privilege’).

If these tests are met, the information will be protected by LPP and exempt from release.

Does LPP apply to government lawyers?

Yes. LPP applies to communications between officers of government agencies and the agency’s in-house or external lawyers if the lawyers are appropriately qualified and are providing independent legal advice and/or services.

Does LPP only apply to current legal proceedings?

No. LPP can apply where a person seeks or obtains legal advice, even if no legal proceedings are currently in progress. LPP can also apply before proceedings begin, if proceedings are likely to commence.



Office of the Information Commissioner
Queensland

What if the legal proceedings are finalised?

Once the elements of LPP are met, the information will continue to be privileged, even after any legal proceedings are finalised.

Will I be able to access this information as part of my application?

If the information meets the tests for LPP, and the LPP's holder has not waived the privilege, it is exempt from release and the agency can refuse you access to it.

When information is *exempt* it means that Parliament has already decided it is contrary to the public interest to release and the agency is not required to consider any public interest arguments about why it should be released.

For additional information and assistance please refer to [What is Exempt Information](#) and the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email 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.

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