



Office of the Information Commissioner
Queensland

Online Training for Decision Makers

Training Manual

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Introduction

This manual contains the information delivered to you in the Office of the Information Commissioner's training program for decision makers. It is intended to let you reference material from that course while you are processing formal applications under the RTI Act and Chapter 3 of the IP Act.

Alternative access

The *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) give people a right to access documents held by Queensland government agencies. The IP Act only allows individuals to apply for access documents containing their personal information¹; the RTI Act lets people apply for access to any documents².

If possible, information should be given to people outside of the formal application process. Access under the RTI and IP Acts is intended to be a last resort³. Formal applications under those Acts must be processed with a pro-disclosure bias⁴.

Because access under the RTI and IP Acts is supposed to be a last resort, it is important to:

- Be familiar with your agency's publication scheme and disclosure log: the information someone is applying for may already be available online.
- Be aware of your agency's administrative access schemes: the information someone is applying for may be available under another Act or an agency policy.

It is also important that you have the authority to give one-off informal access.

- You may be able to give someone what they are applying for, for example if they only want their own personal information and there are no concerns with it.
- The RTI and IP Acts are about access to documents not answers to questions, but if someone asks a question in their application, the relevant business unit may be able to answer it.

Compliant applications

The first step when you receive an application is to decide if it is compliant. You should open a new file for each RTI and IP application you receive.

Compliant RTI applications

A compliant RTI application must:

- be accompanied by the application fee
- include an address to which notices can be sent
- provide enough information to identify the documents being sought, and

¹ Section 40 of the IP Act.

² Section 23 of the RTI Act.

³ Preamble to the RTI Act.

⁴ Section 39 of the RTI Act; Section 58 of the IP Act.

- state whether access is sought for applicant's own use/benefit, or for the benefit/use of another entity and, if so, give the name of the other entity.⁵

If the documents applied for include the applicant's personal information, they must supply (with the application or within 10 business days):

- evidence of identity
- if the applicant has an agent, evidence of their authority and identity.⁶

The processing period starts when the application arrives, even if the application is not compliant. The processing period is 25 business days. You must give the applicant a reviewable decision by the end of the processing period.

If the application is not compliant this processing period may be the initial processing period.

Compliant IP applications

A compliant IP application must include:

- enough information to identify the documents being sought
- an address to which notices can be sent.⁷

With the application or within 10 business days the applicant must supply:

- evidence of identity
- if the applicant has an agent, evidence of their authority and identity.⁸

Evidence of identity and authority

Documents which are evidence of identity include:

- a passport
- birth certificate
- drivers licence
- another document which satisfies you.⁹

If copies are provided, they must be certified by a Justice of the Peace, lawyer, or Commissioner for Declarations.¹⁰

An applicant can have an agent, someone who applies on their behalf, such as a friend, relative or lawyer.¹¹ Evidence of the agent's authority should generally be in writing, include full names, and be signed and dated by the applicant.

⁵ Section 24(2) of the RTI Act.

⁶ Section 24(3) of the RTI Act.

⁷ Section 43(2) of the IP Act.

⁸ Section 43(3) of the IP Act.

⁹ Section 3 *Information Privacy Regulation 2009 (IP Regulation)* and *Right to Information Regulation 2009 (RTI Regulation)*.

¹⁰ Section 3(3) IP Regulation and RTI Regulation.

¹¹ Section 24(3)(b) RTI Act; Section 43(3)(b)

Documents vs information

The RTI or IP application must be for documents.¹² Applicants cannot apply for information or for answers to questions.

If someone has phrased their application this way it may not be a compliant application. You will need to consider what they have written to decide if it can be read as a request for documents containing the information and you may want to call the applicant to discuss their application.

In these circumstances, you may want to consider if the applicant can be given the information or answers informally.

The application is not compliant

If the application is not compliant there are steps you must take.¹³

You must make a reasonable effort to contact the applicant within 15 business days and tell them why their application is not compliant.¹⁴

Once you have contacted them, you must give them a reasonable opportunity to make their application compliant.¹⁵ Generally, 15 business days would be a reasonable opportunity. However, in some circumstances, for example where the applicant is a prisoner or lives in an area affected by natural disaster, this may not be long enough.

Because the processing period is running, depending on the applicant's circumstances and/or the issues involved you may need to ask for an extension of time.¹⁶

If the applicant makes the application compliant the processing period will reset.¹⁷

If the applicant does not make the application compliant you must issue a *prescribed written notice*¹⁸ stating that you refuse to deal with the application because it does not comply with the application requirements¹⁹.

The applicant can seek a review of your decision that their application is noncompliant.²⁰

Compliant applications: disclosure logs

This part of the process **only** applies to decision-makers for departments and Ministers and it **only** applies to RTI applications.

As soon as practicable after receiving a compliant RTI application, or after an RTI application is made compliant, departments and Ministers must put certain information on their disclosure log:

¹² Section 23 RTI Act; Section 40 IP Act.

¹³ Section 33 RTI Act; Section 53 IP Act.

¹⁴ Section 33(2) RTI Act; Section 53(2) IP Act.

¹⁵ Section 33(3) RTI Act; Section 53(3) IP Act.

¹⁶ You can ask for extra time under section 35 of the RTI Act or section 55 of the IP Act at any time before the processing period ends.

¹⁷ Section 33(4) RTI Act; Section 53(4) IP Act.

¹⁸ Section 191 RTI Act; Section 199 IP Act.

¹⁹ Section 33(5) RTI Act; Section 53(5) IP Act.

²⁰ Definition of *reviewable decision* in Schedule 5 RTI Act and Schedule 5 IP Act.

- the date of the application
- what the applicant has applied for
- whether the applicant is applying to benefit someone else and, if so, the person they are intending to benefit.²¹

The RTI Act sets out the information which must not be published on a disclosure log.²²

Which Act?

When you receive an application you will have to decide which Act it should be processed under.

- Only documents that contain the applicant’s personal information (it does not matter what else is in the documents): **IP Act**
- Documents that do not contain the applicant’s personal information: **RTI Act**
- A mix of documents that do and do not contain the applicant’s personal information: **RTI Act.**

A document *contains the applicant’s personal information* if the applicant’s personal information is in the document somewhere, regardless of what else is in the document, for example their name is on page nine of a ten page document.

The application form asks applicants to tick a box to describe their application, indicating the Act they are applying under:

- entirely personal – IP Act
- entirely non-personal – RTI Act
- a mix of personal and non-personal – RTI Act.

Applicants are unlikely to be familiar with how an agency stores records, and may not understand what is and is not their personal information, when ticking the box.

If the applicant has selected one Act and you decide their application should be processed under the other Act there are steps you have to follow.

IP application that should be RTI

If someone applies under the IP Act but their application will capture documents that do not contain their personal information you must:

- contact the applicant and inform them that their application cannot be made under the IP Act—the processing period started running when the application arrived, so you should make contact as soon as possible. If necessary, ask for an extension.
- give them a reasonable opportunity to either:
 - change what they have asked for in their application so it can be made under the IP Act, or
 - pay the application fee so it can be made under the RTI Act.²³

²¹ Section 78 RTI Act.

²² Section 78B RTI Act.

²³ Section 54 IP Act.

If the applicant:

- changes their application so it only captures documents which contain their personal information—you deal with it under the IP Act and the processing period resets.
- pays the application fee to switch the application to the RTI Act²⁴ and the processing period starts again under the RTI Act.

If the applicant does neither you must again consider if the application can be an IP application.

If it cannot, because it is not limited to documents that contain the applicant's personal information, you must:

- make a formal decision
- give the applicant prescribed written notice within ten calendar days of your decision and before the end of the processing period.²⁵

This is a reviewable decision.²⁶

RTI application that could be made under the IP Act

If someone applies under the RTI Act but they could have applied under the IP Act, you must:

- contact the applicant within 15 business days of receiving the application
- advise them their application could have been made under the IP Act with no application fee or processing charges.²⁷

If the applicant:

- ask for the application to be dealt with under the IP Act—you switch it to the IP Act and refund the application fee²⁸. The processing period starts again under the IP Act.
- confirms it as an RTI Act application—you continue to deal with it under the RTI Act.
- does not respond—you continue to process it under the RTI Act²⁹.

Transferring applications

If you receive an application for documents that your agency does not hold and you know that another agency *does* hold them you can transfer the application to the other agency if the other agency consents.³⁰ You can:

- part transfer, where you have some but not all of the documents
- transfer in full, where you have none of the documents.

²⁴ Section 54(4) IP Act.

²⁵ Section 54(5) IP Act.

²⁶ Definition of *reviewable decision* in Schedule 5 RTI Act and Schedule 5 IP Act.

²⁷ Section 34 RTI Act.

²⁸ Section 34(3) IP Act.

²⁹ Section 34(4) RTI Act.

³⁰ Section 38 RTI Act; Section 57 IP Act.

Before transferring you must contact the decision-maker in the other agency, as you must have the other agency's consent to transfer the application. This will also allow you to check that the other agency actually does have the documents.

You need to send a copy of the application form and evidence of identity and authority (if any) to the other agency when you transfer the application.

For a full transfer of an RTI application you also need to transfer the application fee.

You are not required to talk to the applicant before transferring their application but it is a good idea to do so. You should tell them:

- that their application (including any identity documents, if applicable) will be transferred, in full or in part
- the agency it will be transferred to and their contact details
- if they may need to pay another application fee.

Some applicants may prefer to alter or withdraw their application rather than have it transferred to the other agency.

The other agency gets extra time to deal with the application: ten business days or however long it actually takes you to transfer the application to them, whichever is shorter³¹.

Timeframes

It is very important that you:

- are aware of how much time the RTI and IP Acts allow for specific actions
- are aware of when the 'clock stops'
- keep track of these timeframes³² so the application does not become a deemed decision.

The main timeframe is the processing period, which is 25 business days. If you receive a noncompliant application, or an application that has other defects, you may have two processing periods. An initial processing period which resets if the defects are rectified.

Sometimes the processing period will pause for certain events or for other timeframes. This is called 'stopping the clock'. It will not happen in the initial processing period.

Calculating Timeframes

There are several rules you need to remember when you are calculating timeframes.

Business days: when counting business days you do not count public holidays or weekends. You **must** count days that the office is closed for other reasons.³³

Calendar days: if the Act says calendar days or simply refers to *days* then you count every day on the calendar.

³¹ Section 18 RTI Act; Section 22 IP Act.

³² Section 18 RTI Act; Section 22 IP Act.

³³ Section 36 *Acts Interpretation Act 1954*.

When the Act sets out a specific timeframe for doing something you do not count the day on which the trigger event happens, for example, receiving an application which triggers the processing period.³⁴ The application arriving is the trigger event, which is Day Zero.

There is one exception to this in the RTI Act: the Revision Period. It begins when the agency gives the applicant a Charges Estimate Notice and not on the next business day.³⁵ As soon as the agency issues a CEN, the processing period pauses and the revision period begins.

You must give the applicant a reviewable decision by the last day of the processing period or a deemed decision will be taken to have been made.

Both a business day and a calendar day last until midnight. If a compliant application is received by email on January 12th at 11:00 pm, January 12th (presuming it's a business day) is Day Zero.

Day Zero happens on the day the application arrives in the agency. Note that Day Zero happens as soon as the *agency* receives it, not you; if the application arrives in the mail room on Monday, Monday is Day Zero, even if it does not reach you until Friday. It is important that applications are sent to you as quickly as possible from the area which receives them.

Set Timeframes³⁶

Processing period: 25 business days from the day the agency receives the application. The application does not need to be compliant or meet any other legislative requirements. There may be an initial processing period if the application is not compliant when it arrives or it has other defects. If these defects are rectified, the processing period resets.

Transfer period: ten business days or the time it actually takes to transfer an application, whichever is shorter.

Revision period: the time between giving a Charges Estimate Notice (this will be explained later in the training) and the time the applicant confirms the original or narrowed application.

Consultation period: ten business days.³⁷

Attaching a schedule to the front of the file that lists the dates certain things have to be done by will help ensure you do not miss any key dates.

Processing period: the processing period resets

The processing period starts when an application arrives. If the application does not meet all legislative requirements when it arrives, that processing period will be the *initial processing period*. This is because if the applicant fixes the defects with their application so that it does meet all the legislative requirements, the processing period will reset.

³⁴ Section 38 *Acts Interpretation Act 1954*.

³⁵ *Stanway and Queensland Police Service* [2018] QICmr 7 (22 February 2018)

³⁶ Section 18 RTI Act; Section 22 IP Act.

³⁷ Section 18 RTI Act, Item 2(d); Section 22, Item 2(d).

Processing period: clock stopping

The time between when the clock stops and the clock restarts does not come out of your 25 business days. Clock stopping will not happen in the initial processing period.

The clock stops on the processing period:

- for the transfer period and revision period
- for ten business days if you have to consult with a third party
- for time you allow the applicant to consult when you give them a notice that you are intending to refuse to deal with their application (this will be explained later).

This is because the time taken or allowed for these events does not count as part of the processing period.³⁸ When one of these events begins the processing period pauses until they are finished.

Asking for more time

You can ask the applicant for more time to work on their application—called a *further specified period*—at any stage before the end of a processing period.³⁹

- You should ask for a set number of business days rather than for an extension to a specific date. This will ensure there is no confusion about when the processing period actually ends. For example if you ask for an extension until 1 April but then realise you have to consult, which gives you an extra ten business days to make your decision, it can be difficult to determine when the processing period ends.
- If the applicant verbally agrees to give you more time you should confirm this in writing or create a file note of their agreement.

Even if the applicant does not respond to your request, you can continue to work on the application and make a decision as long as the applicant has not refused your request for more time or sought an external review.

Scoping the application

The scope of the application is what the applicant has applied for. You need to identify the scope before you can begin searching for documents.

You may need to talk to the applicant about the scope if it is not clear what they want from their application. If there is not enough information for you to identify the documents sought the application may not be compliant. In this case, particularly if you are having discussions with the applicant about the scope, you may need to ask for an extension because the processing period is running.

You could also ask if they are willing to exclude any documents, such as exact duplicates, drafts, or information printed off the internet.

You must not guess or make assumptions about what the applicant is seeking as this could mean that irrelevant documents are located or that relevant documents are missed.

³⁸ Section 18 RTI Act, Item 2; Section 22 Item 2.

³⁹ Section 35(1) RTI Act; Section 55(1) IP Act.

It is important to remember that an access application only covers documents that exist on the day the application is received. Documents created or received after that date are not within scope of the access application.⁴⁰

It can be helpful to divide the scope up based on the business units which will hold the documents.

Once you have identified the business units which will hold documents relevant to the application you need to send them a *search request*.

Search requests

A search request is a communication, usually an email, which is sent to the relevant business units within your agency. Developing a search request form which can be attached to the email will speed up this process.

A search request should:

- set out the application's scope relevant to that business unit, including any dates
- explain that all original documents need to be located and sent to you, including the date you need them
- have a space for the business unit officers to record their names and how long they spent identifying and gathering the documents

It should also:

- ask the officers to identify any concerns they have about the documents on a separate sheet
- be signed off by the senior officer of the unit before being returned to you with the documents.

Search records

Search records are very important. They will help you show that you took all reasonable steps to find the documents they applied for.

These records will also assist you if the applicant seeks an external review on *sufficiency of search grounds*, ie that the agency should have more documents than you located.

Your records should include:

- any reasons why documents could not be located, eg never created or destroyed in flood
- whether documents expected to be found were not found and any reasons
- whether documents were disposed of, archived, or transferred and when and on what authority
- steps taken to locate all documents.

⁴⁰ Section 27 RTI Act; Section 47 IP Act.

Back-up systems

You generally do not have to search back-up systems, even if the applicant asks you to, however you can do so if you think it would be appropriate.⁴¹ You **must** search back-up systems if:

- you are intending to make a decision that a document does not exist, **and**
- you think the document has been kept in and is retrievable from a back-up system; **and**
- the document would have been a prescribed document, ie a public record that could not have been lawfully disposed of.⁴²

Financial Hardship

An applicant in financial hardship does not have to pay any processing or access charges. Individuals⁴³ and non-profit organisations⁴⁴ can request that processing or access charges for an application be waived on the basis of financial hardship.

Non-profit organisations apply to the Information Commissioner for financial hardship status.⁴⁵ The Information Commissioner will make a decision and publish it at www.oic.qld.gov.au. You can check the OIC website if a non-profit organisation applies and claims financial hardship status.

Individuals must make a written request to the agency for waiver on financial hardship grounds. You must grant it if:

- they ask in writing for the charges to be waived and give you a copy of their concession card
- you are satisfied that the applicant is the holder of the concession card, which includes being named on it; and
- you are satisfied that the applicant is not applying for another person who is trying to avoid paying any charges.⁴⁶

You can only accept the concession cards listed in the RTI⁴⁷ and IP⁴⁸ Acts.

Processing charge

This part of the training only applies to RTI applications as there are no processing charges under the IP Act. Remember that if the applicant is in financial hardship they do not have to pay any processing or access charges and that there are no processing charges for documents that contain the applicant's personal information.

Once you have the documents you need to:

- assess the estimated processing and access charges
- schedule the documents (unless the applicant agrees to waive this requirement)
- prepare a Charges Estimate Notice.

⁴¹ Section 29 RTI Act; Section 49 IP Act.

⁴² Section 52(2) RTI Act.

⁴³ Section 66 RTI Act; Section 82 IP Act.

⁴⁴ Section 66(b) RTI Act.

⁴⁵ Section 67 RTI Act.

⁴⁶ Section 66(2) RTI Act; Section 82(2) IP Act.

⁴⁷ Section 66(5) RTI Act.

⁴⁸ Section 82(4) IP Act.

The RTI Act states that you have a duty to minimise charges.

Scheduling the documents

Under the RTI Act, you must give the applicant a schedule of relevant documents before the end of the processing period.⁴⁹ The applicant can waive this requirement.

The schedule must set out:

- a brief description of the classes of documents held by your agency which are in scope of the application
- the number of documents in each class.

Creating a template schedule in a spreadsheet or table may make it simpler to schedule documents, and it will allow you to sort them.

Example schedule of document:

- Emails:
 - 7 emails from officers to the CEO about the Lagoon St upgrade.
- Briefing memos
 - 3 memos from officers to the CEO about the Lagoon St upgrade.
- Petitions:
 - 132 Petitions from members of the public supporting the Lagoon St upgrade.
 - 132 Petitions from members of the public objecting to the Lagoon St upgrade.
- Reports:
 - 2 Reports on the impact of the Lagoon St upgrade on native wildlife.

RTI application processing charges

The processing charge is calculated based on how long it takes an agency to process an access application under the RTI Act. It can include the time taken to:

- search for and retrieve relevant documents
- make the decision and do things related to making the decision.⁵⁰

The amount of the processing charge is set out in the RTI Regulation.⁵¹

You cannot charge for:

- extra time spent locating a document which is not filed where it should be, or for which there is an inadequate filing system⁵²
- time spent processing any document that contains the applicant's personal information⁵³. For example, if the applicant's name is on page nine of a ten page report you cannot charge for any time spent processing any part of that ten page document.

⁴⁹ Section 36(1)(b)(i)

⁵⁰ Section 56 RTI Act.

⁵¹ Section 5 RTI Regulation.

⁵² Section 5(2) and (3) RTI Regulation.

You also cannot charge if the time you will spend processing the application is less than five hours.⁵⁴

Assessing the RTI processing charges

Counting how many pages there are in each document and estimating how long it will take you to read each page and make a decision on it should help you estimate the processing charge. A number of factors will affect how long it will take you to read and assess each page, including the complexity of the information and readability of the document.

You should also think about how long it will take you:

- to write the prescribed written notice of your decision
- consult with any third parties
- prepare the documents for release.

When calculating the estimated processing charges do not forget the time business unit officers spent searching for documents.

Access charges: RTI and IP applications

You also need to estimate the likely access charges. The access charges are the actual costs of giving the applicant access to the documents. There are access charges under the RTI and IP Act.⁵⁵

You can charge the applicant for:

- engaging someone else to search for and retrieve the document
- relocating the document if necessary to allow access to be given, for example sending them from a regional office to the RTI unit
- transcribing a document such as an audio recording or words recorded in shorthand or in code
- creating a written document using equipment usually available to the agency for retrieving or collating stored information (for example printing a report from a database)
- otherwise giving access to the document, for example by reproduction of the document, such as duplicating an X-ray or photograph.⁵⁶

The charge for black and white photocopies is \$0.25 per A4 page.⁵⁷ You cannot charge the applicant for the actual cost of giving access electronically, such as by email or on a CD.⁵⁸

Remember that there are no access charges for an applicant who has been granted financial hardship status.

⁵³ Section 59 RTI Act.

⁵⁴ Section 5(1)(a) RTI Regulation.

⁵⁵ Section 6 RTI Regulation; Section 4 IP Regulation.

⁵⁶ Section 6(1)(a) RTI Regulation; Section 4(1)(a) IP Regulation.

⁵⁷ Section 6(1)(b) RTI Regulation; Section 4(1)(b) IP Regulation.

⁵⁸ Section 6(2) RTI Regulation; Section 4(2) IP Regulation.

Uneconomical to charge

If the total charges are going to be more than it would cost the agency to receive and process the payment you can waive them because it would be uneconomical to charge.⁵⁹

You may wish to develop an internal policy as a guide to what would be considered uneconomical to charge, to save time and help ensure consistency. For example, if the total charge for the application will be \$65.00, but it will cost your finance area \$75.00 to process the payment, you may choose to simply waive the charges.

You may need to speak to the business unit which handles payments to find out how much it actually costs to process a payment.

Charges Estimate Notice for RTI applications

A Charges Estimate Notice (CEN) is a written estimate of how much the processing and access charges are likely to be. You only issue a CEN for RTI applications.

You must give a CEN to the applicant before the end of the processing period, even if there are no charges payable.⁶⁰ If there are no charges payable you could simply include the CEN in the decision notice.

The amount quoted in a CEN cannot be reviewed, however the decision that any charge is payable *is* a reviewable decision⁶¹.

An applicant will have **20 business days**⁶² from the date of the CEN to either:

- confirm
- narrow, or
- withdraw their application⁶³.

The applicant and you may agree to extend that period⁶⁴.

The applicant may wish to apply for a waiver of the charges on the grounds of financial hardship upon receipt of the CEN. If they apply and you grant it you will need to issue a second CEN stating that no charges are payable. This could be included in your notice to the applicant that they have been granted financial hardship status.

If an applicant narrows the scope the agency needs to issue a second⁶⁵ (and final⁶⁶) CEN to the applicant.

If an applicant confirms the CEN the agency must then continue processing the application and the processing period continues.

⁵⁹ Section 64 RTI Act; Section 81 IP Act.

⁶⁰ Section 36(b)(ii) RTI Act.

⁶¹ Definition of *reviewable decision* in Schedule 5 of the RTI Act.

⁶² Section 36 RTI Act, *prescribed period*, Item 1.

⁶³ Section 36(3) RTI Act.

⁶⁴ Section 36 RTI Act, *prescribed period*, Item 2.

⁶⁵ Section 36(4) RTI Act.

⁶⁶ Section 36(5) RTI Act.

The RTI Act does not allow an agency to request payment of a deposit from the applicant. The final charges payable for the application can be less, but cannot be more, than the amount quoted in the CEN.⁶⁷

The applicant does not have to pay the charges until after you give them your written notice of your access decision which will include the final amount of the processing and access charges payable.⁶⁸ They must pay before they can access any documents⁶⁹.

Decision making: pro-disclosure bias

As a decision maker you must have a pro-disclosure bias when you are making your decisions. This includes decisions to refuse to deal with applications and decisions about whether to grant or refuse access to document.⁷⁰

You have the discretion to release information even where the RTI or IP Act would allow you to refuse access⁷¹ and you have the discretion to process an application even where the RTI or IP Act would allow you to refuse to deal with it⁷².

Refusal to deal

Effect on agency's functions

If processing the application (or multiple applications from one applicant) would substantially and unreasonably divert the resources of the agency in the performance of its functions you may be able to refuse to deal with it.⁷³ There are decisions on this point you can view on OIC's website.⁷⁴

You can consider the resources that would be used:

- identifying, locating or collating documents
- deciding whether to give, refuse or defer access
- to give access to edited copies of any documents
- examining any documents
- consulting with a third party
- making a copy, or edited copy, of any documents
- notifying any final decision on the application.⁷⁵

Before you can make this decision you must give the applicant:

- a written notice of your intention to refuse to deal with their application on these grounds which outlines the prescribed consultation period (10 business days)
- a reasonable opportunity to consult with you; and

⁶⁷ Section 61 RTI Act.

⁶⁸ Section 60 RTI Act; Section 79 IP Act.

⁶⁹ Section 69(5) RTI Act; Section 84(5) IP Act.

⁷⁰ Section 39(3) RTI Act; Section 58(4) IP Act.

⁷¹ Section 48(3) and Section 49(5) RTI Act.

⁷² The Refusal to Deal provisions in Chapter 3, Part 4 of the RTI and IP Acts use the word *may*, which indicates a discretion **not** to refuse to deal even where the Acts would allow you to do so.

⁷³ Section 41 RTI Act; Section 60 IP Act.

⁷⁴ <http://www.oic.qld.gov.au/annotated-legislation/right-to-information/chapter-3-disclosure-by-application-under-this-act-23-122/part-4-refusal-to-deal-with-application-39-43/41-effect-on-agencys-or-ministers-functions/overview-of-section-41-rti-act>

⁷⁵ Section 41(2) RTI Act; Section 60(2) and (3) IP Act.

- as far as is reasonably practicable, information that would help them change their application to remove the ground for refusal.⁷⁶

During the consultation period, the applicant can consult with you with a view to making their application in a form that would remove the ground for refusal (eg they could narrow the scope of their application, meaning there would be fewer documents to search for and deal with).

Examples of how an applicant may narrow their application could be by requesting:

- only documents about a specific incident rather than multiple subject matters
- only documents captured within a specific or reduced date range
- electronic documents rather than both electronic and hard copy documents
- screen shots rather than copies of full CCTV recordings

If the applicant does not respond in writing they are deemed to have withdrawn their application at the end of the consultation period.⁷⁷

If the applicant refuses to narrow their application, or does not narrow it sufficiently to remove the grounds for refusal, you can make a decision to refuse to deal with the application.⁷⁸

Previous application for same documents

If the applicant has previously applied for any of the same documents, and has not given a good reason why they are applying again, you may be able to refuse to deal with the application.⁷⁹ This includes previous applications made under both the IP Act and the RTI Act.⁸⁰

Good reasons could include:

- access was refused on the previous application because of a time-limited reason, eg interference with a current investigation that has now finished
- the previous application was withdrawn, or resulted in a deemed refusal and the applicant did not seek an external review.

Class claim: all documents consist of exempt information

If every document the applicant has applied for will be made up entirely of exempt information you may be able to refuse to deal with the application.⁸¹ For example, the applicant applies for all legal advices obtained by the agency in relation to particular land resumptions, or for all Cabinet briefs written between October and November last year.

You do not need to identify any or all of the documents before you make this decision but it must be apparent from the application that all documents will be comprised of exempt information.⁸²

This only applies to documents containing exempt information, not where disclosure would be contrary to the public interest.

⁷⁶ Section 42 RTI Act; Section 61 IP Act.

⁷⁷ Section 42(5) RTI Act; Section 61(5) IP Act.

⁷⁸ Section 42(4) RTI Act; Section 61(4) IP Act.

⁷⁹ Section 43 RTI Act; Section 62 IP Act.

⁸⁰ Section 43(1)(a) RTI Act; Section 62(1)(a).

⁸¹ Section 40 RTI Act; Section 59 IP Act.

⁸² Section 40(2) RTI Act; Section 59(2) IP Act.

Refusal to deal: delivering the decision

A decision to refuse to deal with an application is a reviewable decision.⁸³ You must give the applicant a prescribed written notice of your decision.

Decision to refuse access

When you refuse access to a document under the RTI Act you make your decision under Section 47 of the RTI Act. It lists all the sections which set out the grounds on which you can refuse access.

The IP Act also refers you to Section 47 of the RTI Act to make a decision to refuse access⁸⁴. This is because all the grounds of refusal are contained in the RTI Act instead of being duplicated in the IP Act.

Refusing access: non-existent or unlocatable

A document will be non-existent or unlocatable if you are satisfied that it:

- does not exist (for example, it was never created)
- is unlocatable because it should be in your agency's possession or control and all reasonable steps have been taken to find the document but it cannot be found.

You can refuse access to a document that is non-existent or unlocatable, but you must search the back-up system first if you think it might be held there.⁸⁵

A decision to refuse access because a document is non-existent or unlocatable is a reviewable decision⁸⁶.

Refusing access: Exempt information

You can refuse access to documents (in full or in part) if they contain exempt information.⁸⁷ The categories of exempt information are listed in Schedule 3 of the RTI Act. Exempt information is information Parliament has already decided is contrary to the public interest to release; if you decide information is exempt you do not have to consider the public interest factors.

Types of exempt information include:

- Cabinet information
- legally privileged information
- law enforcement information
- information prohibited from disclosure by an Act listed in Schedule 3 of the RTI Act.

⁸³ Definition of *reviewable decision* in Schedule 5 RTI Act and Schedule 5 IP Act.

⁸⁴ Section 67(1) IP Act.

⁸⁵ Section 52 RTI Act.

⁸⁶ Definition of *reviewable decision* in Schedule 5 of the RTI Act and Schedule 5 of the IP Act.

⁸⁷ Section 47(3)(a) and Section 48 RTI Act.

Exempt information: legal privilege

Information will be exempt information if it is subject to legal professional privilege.⁸⁸ For something to be privileged it must be:

- confidential, and
- created for the dominant purpose of seeking or providing legal advice or for use in litigation.

It applies where the lawyer is part of the agency, or where they are a private lawyer retained by the agency, as long as advice is given by the lawyer in their capacity as a professional legal adviser.

Information will be confidential if the parties seeking and giving the legal advice treat it confidentially.

It is particularly important that they have not carelessly or deliberately told other people about it in way that is inconsistent with its confidential nature, such as talked about it in a newspaper interview or with an opposing party in a legal proceeding. This is likely to have the effect of waiving any privilege. If privilege has been waived the information will not be exempt information under this provision.

A document will be created for the dominant purpose of legal advice if that was the primary reason for creating the document. Copies of non-privileged documents can become privileged if they are given to a lawyer as part of seeking advice.

For example, an officer asks their legal unit for advice on a road closure and they attach the road closure application to the memo requesting advice. The memo and copy of the application are privileged. The original road closure application is not privileged, only the copy attached to the memo.

For more information on legal professional privilege see the OIC's Annotated Legislation⁸⁹.

Exempt information: CCC investigations

Information obtained, used, or prepared by the Crime and Corruption Commission (CCC), a prescribed crime body, for an investigation in performance of its prescribed functions is exempt information.⁹⁰

The CCC's prescribed functions include:

- to raise standards of integrity and conduct in units of public administration
- to ensure a complaint about, or information involving, misconduct is dealt with in an appropriate way.

This provision applies where:

- the CCC conducted the investigation, or

⁸⁸ Schedule 3, Section 7 RTI Act.

⁸⁹ <http://www.oic.qld.gov.au/annotated-legislation/right-to-information/schedule-3-exempt-information/7-information-subject-to-legal-professional-privilege>

⁹⁰ Schedule 3, Section 10(4) RTI Act.

- where the CCC referred the investigation to the agency to carry out, as long as the agency reports to the CCC at the end of the investigation.

The information may no longer be exempt if it is about the applicant and the investigation has been finalised.

For more information on the CCC exemption see the OIC's Annotated legislation.⁹¹

Exempt information: prohibited disclosure

Other Acts which prohibit the release of information do not override the access provisions of the RTI⁹² or IP Acts⁹³. However, some Acts which prohibit release are recognised in the RTI Act.⁹⁴

Information prohibited from disclosure by the Acts listed in Schedule 3, Section 12 of the RTI Act is exempt information. This includes information prohibited from disclosure under:

- Section 29(2) of the *Aboriginal Cultural Heritage Protection Act 2003*
- Section 314 of the *Adoption Act 2009*
- Sections 186-188 of the *Child Protection Act 1999*.

If you have decided it is exempt you do not have to consider the public interest any further. For more information see the OIC's Annotated Legislation⁹⁵.

Refusing access: Contrary to the public interest (CTPI) information

If information is not exempt information you need to consider whether, on balance, it would be contrary to the public interest to release it.⁹⁶

You make this decision by balancing the public interest factors contained in the RTI Act. There are:

- irrelevant factors
- factors favouring disclosure
- factors favouring non-disclosure
- factors favouring non-disclosure because of a public interest harm in disclosure.⁹⁷

These lists are not intended to be exhaustive. Depending on the situation, you may consider that there are other public interest factors.

CTPI: Balancing the factors

You apply the CTPI factors to your documents by⁹⁸:

⁹¹ <https://www.oic.qld.gov.au/annotated-legislation/rTI/schedule-3/12-information-disclosure-of-which-prohibited-by-act/overview-of-schedule-3,-section-12-rTI-act>

⁹² Section 6 RTI Act.

⁹³ Section 7(1) IP Act.

⁹⁴ Schedule 3, Section 12 RTI Act.

⁹⁵ <https://www.oic.qld.gov.au/annotated-legislation/rTI/schedule-3/10-law-enforcement-or-public-safety-information/section-104/overview-of-schedule-3,-section-104-rTI-act>

⁹⁶ Section 47(3) and Section 49 RTI Act.

⁹⁷ Schedule 4 of the RTI Act sets these factors out in four separate lists.

⁹⁸ Section 49(3) RTI Act.

1. Identifying any irrelevant factors and disregarding them.
2. Identifying the relevant factors favouring disclosure.
3. Identifying the relevant factors favouring non-disclosure.
4. Identifying how much weight to give to each factor.
5. Comparing the factors for and against disclosure.

If the factors favouring disclosure outweigh those favouring non-disclosure, or if they are evenly balanced, you must release the information.

If the factors favouring non-disclosure outweigh those favouring disclosure, you can refuse access to the information.

As you read through the documents it can be helpful to note down any:

- relevant public interest factors for and against disclosure
- relevant reasons supporting the factors.

In some cases multiple public interest factors may be relevant. You should identify all of them to support your access decision.

If any other relevant considerations are raised in the context of the application, by the applicant or by the third party, you should identify those factors.

It may also be helpful to make a checklist of the public interest factors by copying and pasting them from the legislation. This will allow you to simply tick a box as you work through the documents and identify relevant factors.

CTPI: irrelevant factors

The irrelevant factors include⁹⁹ where disclosing information could:

- embarrass the government
- cause loss of confidence in the government
- result in the applicant being confused, misinterpreting or misunderstanding the information
- result in mischievous conduct by the applicant.

It is also irrelevant that the person who created the document is of high seniority within the agency.

CTPI: favouring disclosure

The list of factors favouring disclosure¹⁰⁰ include:

- enhancing government accountability
- promoting discussion of public affairs
- informing the community and assisting inquiries
- enhancing administration of justice and enforcement of the law
- enhancing protection of the environment and reducing health and safety risks.

⁹⁹ Schedule 4, Part 1 RTI Act.

¹⁰⁰ Schedule 4, Part 2 RTI Act.

The fact that the information is the personal information of the applicant is also a factor favouring disclosure.

CTPI: favouring non-disclosure

The list of factors favouring non-disclosure¹⁰¹ in the public interest include:

- prejudicing someone's privacy rights
- prejudicing an entity's business, personal, commercial or financial affairs
- prejudicing security, law enforcement, public safety, or the administration of justice
- impeding the protection of the environment.

CTPI: favouring non-disclosure causing harm

These factors are similar to the factors favouring non-disclosure, but Parliament has decided disclosing this kind of information does cause a public interest harm.¹⁰² This does not mean that disclosure of information to which these factors apply is automatically contrary to the public interest.

These harm factors include:

- affecting relationships with other governments
- affecting an Ombudsman investigation or Auditor-General audit
- destroying or diminishing the commercial value to an agency or person of , trade secrets, business affairs or research
- prejudicing the future supply of confidential information.

Refusing access: other grounds

You may also be able to refuse access where:

- the application is made by or for a child and disclosure would be contrary to the best interests of the child¹⁰³
- the information is the applicant's healthcare information and disclosing it could be prejudicial to the applicant's wellbeing¹⁰⁴
- the documents are available in another way, whether or not there is a fee payable, for example it can be purchased or is available on the agency's website¹⁰⁵.

Irrelevant information

You can delete irrelevant information from a document.¹⁰⁶ Irrelevant information is information that happens to be in the document but is not related to the application.

¹⁰¹ Schedule 4, Part 3 RTI Act.

¹⁰² Schedule 4, Part 4 RTI Act.

¹⁰³ Section 47(3)(c) and Section 50 RTI Act.

¹⁰⁴ Section 47(3)(d) and Section 51 RTI Act.

¹⁰⁵ Section 47(3)(f) and Section 54(d) RTI Act.

¹⁰⁶ Section 73 of the RTI Act.

For example, the application is for documents about royalties paid by Company X. Those documents also have information about royalties paid by Company Q. The Company Q information is irrelevant and can be deleted.

Third party consultation

You must consult with relevant third parties if you decide to release a document and its release could reasonably be expected to be of concern to the third party.¹⁰⁷

This could happen, for example, where the document:

- is about the third party, eg discusses their business proposal
- was given to the agency by the third party, eg evidence supporting a complaint they lodged
- contains information given to the agency by the third party, eg file notes of a conversation with the third party.

You have ten extra business days to make a decision if you have to consult with a third party.¹⁰⁸

The third party can be a government, an agency or a person, but it cannot be a business unit of your own agency or another agency officer in their official capacity.

In some circumstances you may have to consult with an agency officer in their *personal* capacity. For example, if you are considering releasing a transcript of their interview with a workplace grievance investigator.

If you have to consult with an agency officer in their private capacity, you can send the consultation to their work address but you should mark it private and confidential.

You have to take steps that are reasonably practicable to consult. What is reasonably practicable is going to depend on the circumstances.

If you are unsure if the third party is still at the address on the agency file, you should first contact them before sending the documents out or disclosing sensitive information. This will ensure you do not accidentally breach privacy or confidentiality.

You only consult if you are intending to release the document. Do not consult on documents you are not releasing; this takes unnecessary time and can cause the third party unneeded distress.

When you consult you need to give the third party a reasonable time to respond. What is reasonable will depend on the circumstances.

You may need to give extra time if the documents are complex, numerous, or the third party lives in a remote location or has accessibility concerns.

If you have multiple third parties or they have asked for more time to respond you may want to ask the applicant for extra time.

Your consultation letter to the third party should:

¹⁰⁷ Section 37 RTI Act; Section 56 IP Act.

¹⁰⁸ Section 18, Item 2(d) RTI Act; Section 22, Item 2(c) IP Act.

- explain why they are being consulted
- attach details of the exempt information provisions and public interest factors
- indicate a date to have their response back to you
- include a copy of the documents (in the form you are proposing to release them)
- provide an explanation of the consultation process
- explain that the information could be placed on the disclosure log if it is released (these details will be different for departments/Ministers and other agencies).

Consulted third parties get the same review rights as the applicant if you release information over their objections.¹⁰⁹

If a third party objects to documents being released and you decide to release them they can seek an internal review and/or an external review of your decision. You must:

- send the third party and the applicant prescribed written notice of the decision¹¹⁰
- defer giving the applicant access to those documents until the third party's review rights have expired¹¹¹
- give the applicant written notice when access is no longer deferred¹¹².

Amendment applications

The IP Act allows an individual to amend their personal information as well as access it.¹¹³

- The personal information must be inaccurate, incomplete, out of date or misleading; and
- the individual must have previously had access to the document, for example under an IP or RTI application, informal access, or being shown a copy.¹¹⁴

A compliant amendment application has the same criteria as an IP access application; in addition the applicant has to state the information they think is wrong and what is necessary to correct it, including any additions that need to be made to the information.¹¹⁵

If it is not compliant, follow the same steps as for an access application which is not compliant.¹¹⁶

The rules for processing an amendment application are essentially the same as processing an access application. You have 25 business days to make a decision on an amendment application.¹¹⁷

You should:

- get the documents from the business unit
- identify the specific information the applicant claims is inaccurate, incomplete, out of date or misleading
- consider any evidence provided by the applicant to support their claim.

¹⁰⁹ Definition of *reviewable decision* in Schedule 5 RTI Act and Schedule 5 IP Act.

¹¹⁰ Section 37(3)(c) RTI Act; Section 56(3)(c) IP Act.

¹¹¹ Section 37(3)(d) RTI Act; Section 56(3)(d) IP Act.

¹¹² Section 37(4) RTI Act; Section 56(4) IP Act.

¹¹³ Section 41 IP Act.

¹¹⁴ Section 44(1) IP Act.

¹¹⁵ Section 44(4) IP Act.

¹¹⁶ Section 53 IP Act.

¹¹⁷ Section 22 IP Act.

You may need to discuss the applicant's claims with relevant agency officers.

If the applicant is seeking to amend a fact, such as the date something occurred, how much money was paid, or how many rooms are in a house, you should be able to decide if it is correct or not by considering the evidence.

If the applicant is seeking to amend an opinion it becomes more complicated. The applicant may believe that an opinion is wrong but that will not mean you have to grant their amendment application.

If you agree with the applicant that the information is inaccurate, incomplete, out of date or misleading, you can amend the information. You can do this by deleting and replacing the wrong information (if appropriate) or by attaching a notation to the document.¹¹⁸

A notation must:

- state how it is inaccurate, incomplete, out of date or misleading
- if it is claimed to be incomplete or out of date—set out the information required to complete it or bring it up to date.¹¹⁹

If the applicant has given you no evidence to support their claim that the information is wrong, or you are satisfied that the information is not wrong, you can refuse to amend the document.¹²⁰ This is a reviewable decision.

You must give them a prescribed written notice of your decision.

If you refuse to amend the information the applicant is entitled to give you a written notice, requiring you to attach a notation to the file.¹²¹

You do not have to use the applicant's exact words¹²², but the notation should:

- state the way the applicant claims the information to be inaccurate, incomplete, out of date or misleading
- if the applicant claims the information is inaccurate or misleading – set out the amendments the applicant claims are necessary for the information to be accurate or not misleading
- if the applicant claims the information to be incomplete or out of date – set out the information the applicant claims is necessary to complete the information or to bring it up to date.¹²³

Deemed decisions

If you have not given the applicant a prescribed written notice of a decision before the end of a processing period your agency's Principal Officer is deemed to have made a decision refusing access to the documents (a deemed decision). Once that happens you must stop processing the application as you no longer have any power to make a decision.

¹¹⁸ Section 74 IP Act.

¹¹⁹ Section 75 IP Act.

¹²⁰ Section 72 IP Act.

¹²¹ Section 76 IP Act.

¹²² Section 76(4) IP Act.

¹²³ Section 76(2) IP Act.

If your application 'goes deemed' as soon as practicable you must:

- give the applicant a prescribed written notice
- refund the application fee if one has been paid.

The applicant cannot seek an internal review of a deemed decision; they can only seek an external review from the OIC.

Briefing on the application

In some circumstances, you may need to advise your agency's Principal Officer about the decision you have made on an RTI or IP access application. Generally, you would only brief on applications when giving access to documents will require the Principal Officer to prepare for public debate.

Any briefing process must not impact on the timeframes set out in the RTI and IP Acts. It is not appropriate to ask an applicant for extra time so that you can brief your Principal Officer.

It is important that your agency put a written process in place for briefing on RTI and IP applications. This will help to ensure no one can allege that your independence as a decision maker has been impacted.

The OIC has developed model briefing protocols, available on the OIC website, which will assist decision-makers and senior officers in the briefing process. They were written specifically for departments briefing their Director-General and Ministers but its principles will be useful for all agencies.¹²⁴

Prescribed Written Notices

When you make a decision on an RTI access application or an IP access or amendment application you must give the applicant a prescribed written notice of your decision.¹²⁵

Prescribed written notices include a great deal of information which can result in lengthy decision notices that could confuse applicants.

It can be helpful to write a brief summary letter setting out key information for the applicant—numbers of documents to which access is granted and refused, key dates, review rights, and any costs—with the statement of reasons as an attachment to the letter.

A prescribed written notice must include:

- the decision you have made
- your reasons for the decision
- the day the decision was made
- your name and designation
- the person's review rights, including time limits and any procedures to be followed when seeking a review.¹²⁶

¹²⁴ http://www.oic.qld.gov.au/__data/assets/pdf_file/0019/16606/Model-protocols-for-RTI-IP-briefing-processes-v1.0.pdf

¹²⁵ Section 191 RTI Act; Section 199 IP Act.

¹²⁶ Section 191 RTI Act; Section 199 IP Act.

The RTI and IP Act require prescribed written notices for some decisions to have extra information included. The most common decisions are set out in the following slides but it is important that you check the RTI or IP Act to ensure you have included all necessary information.

If giving access to a document you must include:

- itemised access charges (for RTI and IP) and processing charges payable (RTI only)
- how long they have to access the document
- details of what will go on the disclosure log if the applicant accesses the document and if they fail to access the document (RTI only).¹²⁷

If you are removing irrelevant information you must include:

- the fact that the document is a copy with this information deleted

If you are deleting information that is exempt information:

- the fact that the document is a copy with this category of information deleted
- the exempt information provision under which the information was removed
- the reasons you decided the information was exempt information.

If you are deleting CTPI information:

- the fact that the document is a copy with this category of information deleted
- the public interest factors you identified as favouring disclosure and nondisclosure
- the reasons you decided that, on balance, it would be contrary to the public interest to release it.

If you refuse access to a document under Section 47(3) of the RTI Act you must include:

- any processing charges payable (RTI only)
- the provision of Section 47(3) under which access is being refused
- extra information based on Section 47(3) you have used.

For example:

- if refusing access under 47(3)(a):
 - the exempt information provision under which the document is refused
 - your reasons for refusing the document as exempt information
- if refusing access under 47(3)(b):
 - identified public interest factors favouring disclosure and non-disclosure
 - the reasons you decided disclosure was, on balance, contrary to the public interest.

¹²⁷ 54(2)(a) RTI Act; Section 68(2)(a) IP Act.

Preparing the Documents

As the business units are required to provide original documents for you to process it is a good idea to scan or copy all of the documents to ensure the integrity of the original document is maintained. You must not mark or alter the original documents.

When you scan or copy the documents, remember that some documents may be double sided and they may not all be the same sized document (eg. sticky notes, photos, diaries, receipts, maps).

You should also check with your relevant records management area about your agency's record keeping requirements in relation to original documents or files that were subject to the RTI and IP Act.

When considering the scanned or copied documents it is important to number each page. This will help you:

- estimate the processing and/or access charges
- create a schedule of documents (for RTI only)
- remove information from the documents
- keep the documents organised and make sure no documents are overlooked
- prepare your prescribed written notice.

Electronic copies should be saved as PDFs and numbered using suitable software (such as Adobe Acrobat).

Once you have made your access decision all pages where access was granted (in full or in part) should be watermarked or stamped to indicate they were released under the RTI or IP Act.

You may want to include the file number that you assigned to the application on each page. This can be helpful if you get enquiries about the documents.

For electronic copies, redaction software will help you remove information from the documents. Redax is a program that 'plugs in' to Adobe Acrobat and allows you to:

- draw a box around information in a PDF document
- automatically removes any information (including text and images) that was located inside all of the boxes you have drawn
- insert the section under which the information was removed.

Once redacted, the boxes can be formatted to appear as an outline or a solid box.

You can also format it so the section number relied on for your decision can appear inside the box, another location on the page, or in a separate index report.

Information about Redax can be found at: www.appligent.com.

The section under which the information was removed should be identified either on the page or in a separate report which refers to the appropriate page.

Giving access

Access to the document can be given in one or more of these forms:

- in photocopy form
- on a CD or DVD
- by sending a download link
- giving the applicant a reasonable chance to inspect.
- allowing the applicant to listen to or view audio or video recordings
- transcripts of audio recordings or shorthand documents
- if it is not a written document, using the agency's equipment to produce a written document for the applicant, eg extracting information from a database using agency software.¹²⁸

You must give access to the applicant in the form they requested, such as inspection, photocopies or burned onto a CD.¹²⁹ The only exception is where doing so would:

- unreasonably interfere with the agency's functions
- be detrimental to the document's preservation
- infringe copyright of someone other than the State.¹³⁰

In those circumstances you can give access in another way, but you cannot charge more than the applicant's requested form of access would have cost.¹³¹

A decision to give access in a form other than that requested (unless it would infringe copyright) is a reviewable decision.¹³²

The applicant must pay any charges before they can access the documents.¹³³ The applicant has 40 business days to pay any charges and access the documents, counting from:

- if you give access – the date of the prescribed written notice
- if you defer access – the date of the notice stating access is no longer deferred
- if they applicant seeks an external review – the date of the informal resolution notice or external review decision.¹³⁴

You can give the applicant extra time to access their documents, but you are not required to do so. If they do not access them in time they lose the right to do so.¹³⁵

¹²⁸ Section 68(1) RTI Act; Section 83(1) IP Act.

¹²⁹ Section 68(3) RTI Act; Section 83(3) IP Act.

¹³⁰ Section 68(4) RTI Act; Section 83(4) IP Act.

¹³¹ Section 68(5) RTI Act; Section 83(5) IP Act.

¹³² Definition of reviewable decision in Schedule 5 RTI Act and Schedule 5 IP Act.

¹³³ Section 69(5) RTI Act-processing and access charges must be paid; Section 84(5) IP Act-access charges must be paid.

¹³⁴ Section 69 RTI Act; Section 84 IP Act.

¹³⁵ Section 69(4) RTI Act; Section 84(4) IP Act.

Disclosure Logs

Departments and Ministers

If you are a decision maker for a department or Minister and the applicant accesses documents under the RTI Act you have to put certain things on your agency's disclosure log (subject to required deletions discussed later).

After receiving a compliant application:

- details of the information being sought by the applicant as set out in their application
- the date the application was made.¹³⁶

After access is given to the documents:

- the applicant's name
- if access was intended to benefit another entity, the entity's name
- a copy of the document.¹³⁷

This does not apply if you give the applicant access to documents that contain the applicant's personal information. It does not apply to documents released under the IP Act.

This information must go on the disclosure log as soon as practicable after the applicant accesses the document.

Other agencies

If you are an RTI decision maker for an agency that is not a department or a Minister you can put documents on your disclosure log if:

- the applicant has accessed them under the RTI Act, and
- they do not contain the applicant's personal information.¹³⁸

This does not apply if you give the applicant access to documents that contain the applicant's personal information or if documents were released under the IP Act.

You should not include any information about the application or the applicant, and certain information must be deleted before you put them on the disclosure log.

Disclosure logs: information that must be deleted

The RTI Act does not allow the following kinds of information to be placed on a disclosure log:

- information that is prevented by law from being published
- information that is defamatory
- information that would unreasonably invade an individual's privacy

¹³⁶ Section 78(2) RTI Act.

¹³⁷ Section 78(3) RTI Act.

¹³⁸ Section 78A(1) RTI Act.

- is information that is, or would reveal, confidential information communicated by someone outside the agency
- information that is, or would reveal, information protected from disclosure under a contract.¹³⁹

This information must be deleted from documents before they are published on the disclosure log. This may include deletion (or non-inclusion) of the applicant's name.

Disclosure logs must comply with the Ministerial Guidelines available at www.rti.qld.gov.au.

Disclosure logs: when applicant does not access

If the applicant does not access the documents (and the documents do not contain the applicant's personal information) within the allowed time, details—

- identifying the document
- about how the document may be accessed
- about any applicable charges

—must (for a department or Minister¹⁴⁰)/may (for another agency¹⁴¹) be included on your disclosure log.

Anyone can then pay the charges and access the documents. Once they have been accessed, they then must (for a department or Minister¹⁴²)/may (for another agency¹⁴³) be placed on the disclosure log, subject to the deletion of certain information discussed above.

Review Rights

A full list of reviewable decisions is set out in the dictionary of the RTI and IP Acts.¹⁴⁴ They include a decision:

- that an application is outside the scope of the Act or is not compliant
- to disclose information over the objections of a third party or without consulting with a third party
- refusing to deal with an application
- refusing access to a document or giving access to a document with information deleted from it
- that an access or processing charge is payable
- to give access in a form different than the applicant requested (unless it was for the protection of a third party's copyright).

Applicants and consulted third parties have a right to internal review and external review.

¹³⁹ Section 78B RTI Act.

¹⁴⁰ Section 78(4) RTI Act.

¹⁴¹ Section 78A(3) RTI Act.

¹⁴² Section 78(6) RTI Act.

¹⁴³ Section 78A(5) RTI Act.

¹⁴⁴ Schedule 5 RTI Act; Schedule 5 IP Act.

They can either seek an internal review and then, if still unhappy, seek an external review, or they can directly seek an external review, as long as the original decision was not made by the Principal Officer of the agency. If the original decision was made by the Principal Officer only an external review may be sought. Some other decisions are also excluded from internal review.

Applications for review must be made in writing provide an address to which notices can be sent.¹⁴⁵

An internal review must be decided by another officer of your agency who is your level or higher.¹⁴⁶

An external review is decided by the Information Commissioner.¹⁴⁷

The applicant and consulted third party have 20 business days from the date of the decision notice to seek a review.¹⁴⁸

Both the agency, for internal review, and the Information Commissioner, for an external review, have the discretion to extend the time period in which to accept a review application.

An agency only has 20 business days to decide an internal review; this time cannot be extended in any circumstances.¹⁴⁹

If an internal review decision is not made in time the agency's Principal Officer is deemed to have made a decision affirming the original decision.

More information

For more information on processing and deciding access and amendment applications, decision makers should refer to the Office of the Information Commissioner's Guidelines and the Annotated Legislation available at www.oic.qld.gov.au.

Decision makers may find the Office of the Information Commissioner's information sheets useful for providing information to applicants and consulted third parties. These information sheets have been drafted specifically for the general public and many of them deal with and explain well-settled areas of the law.

For information and assistance on the general operation and application of the RTI Act and the IP Act, please contact the Enquiries Service on (07) 3234 7373 or enquiries@oic.qld.gov.au.

¹⁴⁵ For internal review: Section 144 RTI Act and Section 96 IP Act; for external review: Section 88 RTI Act and Section 101 IP Act.

¹⁴⁶ Section 80(3) RTI Act; Section 94(3) IP Act.

¹⁴⁷ Section 110(1) RTI Act; Section 123(1) IP Act.

¹⁴⁸ For internal review: Section 82(c) RTI Act and Section 96(c) IP Act; for external review: Section 88(1)(d) RTI Act and Section 101(1)(d) IP Act.

¹⁴⁹ Section 83 RTI Act; Section 97 IP Act.