



Information Sheet

Right to Information Act 2009 and Information Privacy Act 2009

Examination Authorities documents: a guide for applicants

What is an Examination Authority?

An Examination Authority (EA) is a system under the *Mental Health Act 2016* (Qld) which authorises a doctor or authorised mental health professional to examine a person without that person's consent.¹ An application for an EA may be made where concerns are held about a person's mental health but voluntary assessment is not possible. An application for an EA can only be made with the support of a doctor or authorised mental health practitioner. It must be submitted to the Mental Health Review Tribunal (MHRT), which conducts a hearing to determine whether to issue the EA.

Can I apply for Examination Authority documents?

The *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) give people the right to apply to Queensland government agencies for access to documents. However, access to those documents may be refused if information in the documents is exempt or contrary to the public interest to release.

Will I get access to the Examination Authority documents?

No, it is not likely that you will get access. While the EA process may be one that had a significant emotional impact, and seeing the documents may be very important to you, the provisions of the RTI Act will probably prevent you from being given the documents.

Why won't I get access to the documents?

Information is exempt from release if releasing it would prejudice a system for the protection of persons. The information commissioner has recently held that the procedure for making an EA application is a procedure for the protection of persons².

Generally, people who give information in support of an EA application expect the information to be kept confidential and only used for the purpose of the EA. If this information was to be routinely disclosed, it is likely that people would:

- be reluctant to use the EA system when it was appropriate to do so; or

¹ It replaces the previous Justices Examination Order (JEO) system established under the now-repealed *Mental Health Act 2000* (Qld).

² The Information Commissioner has held that an EA is a procedure for the protection of persons.



Office of the Information Commissioner
Queensland

- give information in such guarded terms that it would be of little use in making the difficult assessment of whether action is needed to protect the person, or other people, from harm.

Generally, disclosure of EA documents will have a negative impact on the EA system. This means that EA documents will meet the requirements for exempt information and access to these documents can be refused.

What if I think the Examination Authority was wrongly made?

While this can be a matter of significant concern, it is not something which can be taken into account when deciding whether the EA documents are exempt from release. All that is required for the documents to be exempt is that their release could endanger a system for the protection of persons.

Personal or confidential information provided by other people

Even if information would not endanger a procedure for the protection of persons, it could still be contrary to the public interest to disclose it to you.

The RTI Act has lists of public interest factors that support release and lists that are against release. If the factors against release that apply to the information outweigh the factors supporting release, the information will be contrary to the public interest to disclose.

Several public interest factors against release relate to other people's personal information and information given in confidence; they will apply when considering EA documents. Generally, if information provided in relation to a EA—

- is someone else's personal information, and/or
- was given with the expectation it would be kept confidential

—it will be contrary to the public interest to release it.

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 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.

Published 16 July 2020 and Last Updated 16 July 2020

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