
IPOLA GUIDELINE

Basic guide to the changes in the *Right To Information Act 2009*

This guide does not reflect the current law.

It introduces future changes to the *Right to Information Act 2009* in a general way.

This guide is not legal advice and additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

The *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA**) will make significant changes to the *Information Privacy Act 2009* (Qld) (IP Act) and *Right to Information Act 2009* (Qld) (**RTI Act**).

This guideline provides an overview of the changes IPOLA will make to the RTI Act. These changes will not come into effect until 1 July 2025. They are not current law.

Access and amendment applications

IPOLA will consolidate provisions relating to access and amendment applications in one Act.

Applications for access to documents of an agency¹ will all be made under the RTI Act, even if every document contains the applicant's personal information. All applications to amend personal information contained in agency documents will be made under the RTI Act.

There will continue to be no application fee for amendment applications or for access applications limited to documents containing the applicant's personal information.

A table comparing the current access and amendment provisions with the provisions IPOLA will introduce to the RTI Act is included at the end of this guideline.

The approved form will still be available but will no longer be required for access or amendment applications. Agencies will no longer be required to give the

¹ Agency includes a Minister unless otherwise specified.

applicant a schedule of the documents located in response to an access application.

Timeframes

The way timeframes are calculated will change significantly because the clock will no longer stop and start.

The processing period will no longer be 25 business days, minus the different time periods which stop the clock, e.g., the revision period when an agency issues a Charges Estimate Notice (**CEN**). Instead, the processing period will initially be 25 business days, and the various time periods will simply be added to it to make it longer.

The processing period will end when the agency makes a decision, or the application is deemed because the agency ran out of time. This means agencies will be able to issue CENs at any time and will always be able to rely on the various time periods, e.g., the prescribed consultation period.

The processing period will not begin until the *valid application day*, which is the day the agency receives a valid application, or a noncompliant application is made valid.

An additional 5 business days will automatically be added to the processing period if the applicant only provides a postal address. The five days will apply even if the applicant later provides an email address.

Internal review timeframes

The timeframe for deciding an internal review will no longer be a static 20 business days. Instead, the new internal review processing period (**IRPP**) will work similarly to the processing period.

The IRPP will initially be 20 business days. It will begin when the agency has a valid internal review application and be extended when the agency only has a postal address, consults with a third party, or asks for extra time.

Mixed applications

An agency that receives an access or amendment application that includes some documents which are not documents of an agency (a **mixed application**) will be able to:

- make a decision that those documents are outside the scope of the Act; and
- continue to process and make a decision on the rest of the application.

This will be a reviewable decision (unless all or part of it is a *judicial function decision*). The applicant will be able to seek a review of the 'outside the scope of the Act' decision while the agency processes the rest of their application.

Judicial function decisions

A *judicial function decision* will be a decision that all or part of an application is outside the scope of the Act because of schedule 2, part 2, items 1-8: entities which are excluded from the RTI Act for their judicial or quasi-judicial functions. This includes the processing files for access and amendment applications.²

Judicial function decisions will not be reviewable decisions. They will only be appealable to the Queensland Civil and Administrative Tribunal (**QCAT**).

If an agency makes a reviewable decision and a judicial function decision on the same application, the applicant will be able to apply for review of the reviewable decision and appeal the judicial function decision to QCAT. For mixed applications, one or both of these will be able to occur while the agency processes the rest of the application.

Disclosure logs and publication schemes

Disclosure logs

Currently Departments and Ministers are subject to different obligations than other agencies regarding disclosure logs. These different obligations include a requirement to include application details and the name of the applicant when an application is received, and a requirement that documents must be included in a disclosure log as soon as practicable after it has been accessed by the applicant.

There is also a current requirement for all agencies, including Departments and Ministers, to comply with Ministerial guidelines on the Operation of Publication Schemes and Disclosure Logs.

As a result of the IPOLA reforms, the different requirements for Departments and Ministers will be removed, and all agencies will be subject to the same disclosure log obligations which currently apply to other agencies. Additionally, there will no longer be a requirement to comply with Ministerial guidelines³.

Publication schemes

Publication schemes will also be significantly altered. Instead of the current categories and requirements, agency publication schemes will be required to include:

- the agency's structure and functions and how the agency's functions affect members of the public
- any arrangements that enable members of the public to engage with the agency's functions
- the types of information held by the agency
- the types of information the agency makes publicly available and how that information is made available
- procedures for asking for information, such as any fee or charge that may be payable; and
- any additional information required by Regulation.

² T71 and Queensland Police Service [2022] QICmr 10 (4 March 2022). This will include access and amendment application made under the *Information Privacy Act 2009* (Qld) prior to IPOLA.

Agencies will no longer be required to comply with the Ministerial Guidelines for publication schemes. OIC will provide appropriate guidance in their place.

Review rights

The list of reviewable decisions will be moved from schedule 5 to a new schedule 4A of the RTI Act.

Sufficiency of search

The list of reviewable decisions will be expanded to include a decision that purports to, but may not, cover all documents in scope of an application. This will make sufficiency of search a specific reviewable decision, which will mean that internal reviews can be made solely on sufficiency of search grounds.

External review remittal powers

If additional in scope documents are identified during the external review of an access application, IPOLA will give the Information Commissioner the power to consult with, and refer those documents back to, the agency to make a decision. This power will not be limited to sufficiency of search reviews.

If the documents are referred back, the applicant will be taken to have made a new, fully compliant access application for the additional documents, with no access or processing charges payable. The external review will continue, minus those documents.

Comparison table of access and amendment provisions

This table compares the current IP and RTI Act access and amendment provisions with the IPOLA amendments, to assist agencies in updating systems, procedures, and templates.

Detail of provision	RTI Act section (current)	IP Act section (current)	RTI Act section (IPOLA changes)
Timeframes - processing period etc	18	22	18
Application only for documents that exist	27	47	27
Right to access	23	40	23
Right to amend	N/A	41	78C
Compliance requirements for making an access application	24	43	24

Detail of provision	RTI Act section (current)	IP Act section (current)	RTI Act section (IPOLA changes)
Compliance requirements for making an amendment application	N/A	44	78E
Making an access application for children	25	45	25
Making an amendment application for children	N/A	45	78F
Decision maker for an agency – access	30	50	30
Decision maker for an agency – amendment	N/A	50	78H
Decision maker for a Minister - access	31	51	31
Decision maker for a Minister - amendment	N/A	51	78I
Access applications outside the scope of the Act	32	52	32
Amendment applications outside the scope of the Act	N/A	52	78J
Dealing with noncompliant access applications	33	53	33
Dealing with noncompliant amendment applications	N/A	53	78K
IP application not limited to personal information	N/A	54	24
RTI application solely for personal information	34	N/A	24
Longer processing period	35	55	18
Consulting with a relevant third party	37	56	37
Transfer of access applications	38	57	38
Transfer of amendment applications	N/A	57	78L
Refusal to deal with access application – pro disclosure bias	39	58	39
Refusal to deal with amendment application – pro-amendment bias	N/A	58	78M

Detail of provision	RTI Act section (current)	IP Act section (current)	RTI Act section (IPOLA changes)
Refusal to deal with access application - all documents exempt	40	59	40
Refusal to deal with access application - substantial and unreasonable diversion of resources	41	60	41
Refusal to deal with amendment application - substantial and unreasonable diversion of resources	N/A	60	78N
Refusal to deal with access application – notice of intention to refuse to deal	42	61	42
Refusal to deal with amendment application – notice of intention to refuse to deal	N/A	61	78O
Refusal to deal – previous access application for same documents	43	62	43
Refusal to deal – previous amendment application for same documents	N/A	63	78P
Considered access decision to be made by end of the processing period	45	65	45
Considered amendment decision to be made by end of the processing period	N/A	70	78Q
Deemed access decision	46	66	46
Deemed amendment decision	N/A	71	78R
Grounds of refusal of access	47	67	47
Grounds of refusal of amendment	N/A	72	78S
Notification of access decision and reasons	54	68	54
Notification of amendment decision and reasons	N/A	73	78T
Amendment by alteration or notation	N/A	74	78U
Notation to information (amendment application)	N/A	75	N/A

Detail of provision	RTI Act section (current)	IP Act section (current)	RTI Act section (IPOLA changes)
Particular notation to be added (amendment application)	N/A	76	78V
Internal review	79-83	93-97	79-83

For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

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