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## IPOLA GUIDELINE

### Applying the legislation – Right to Information Act 2009

#### Review rights under the RTI Act

**This guide does not reflect the current law.**

**It highlights important changes to the *Right to Information Act 2009*.**

**This guide does not constitute legal advice and is general in nature only. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.**

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access agency<sup>1</sup> documents and to amend their personal information contained in agency documents, subject to some exceptions and limitations. It also gives people review rights in relation to their application.

#### Reviewable decisions

Review rights in the RTI Act only exist for *reviewable decisions* as defined in schedule 5 and set out in schedule 4A of the RTI Act.

For access applications, *reviewable decisions* are decisions:

- that the application or any part of it is out of scope of the RTI Act under section 32(1)(b), unless it is a *judicial function decision* (explained below)
- that the application is noncompliant with an application requirement under section 33
- giving access despite the objections of a third party consulted under section 37 or without consulting a third party under that section
- refusing to deal with all or part of an application under sections 40, 41 or 43
- refusing access to all or part of a document under section 47
- deferring access under section 72
- giving access to documents subject to the deletion of information under section 73
- that purport to, but may not, cover all documents in scope of the application (sufficiency of search)

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<sup>1</sup> In this guideline, references to an agency include a Minister unless otherwise specified.



- to give access in a different form than the applicant requested, unless it was made due to a third party's copyright
- that a processing or access charge is payable, including a decision not to waive charges – this does not include the amount of the charge; and
- that are deemed decisions.

For amendment applications, *reviewable decisions* are decisions:

- that the application or any part of it is out of scope of the RTI Act under section 78J(1)(b), unless it is a judicial function decision (explained below)
- that the application is noncompliant with an application requirement under section 78K
- refusing to deal with all or part of an application under sections 78N or 78P
- refusing to amend a document under section 78Q
- that a notice under 78V(2) does not relate to information the applicant was entitled to apply to amend; and
- that are deemed decisions.

#### Deemed and affirmed decisions

Under section 46 or 78R of the RTI Act, a deemed decision occurs if the agency does not deliver a considered decision to the applicant by the end of the processing period. If this happens, the Minister or principal officer is taken to have made a decision to refuse access.

Under section 83 of the RTI Act, an affirmed decision occurs if an internal review decision is not made by the end of the internal review processing period (**IRPP**). The principal officer or Minister is taken to have affirmed the original decision.

Under section 86A and 86B of the RTI Act, a deemed or affirmed decision can also occur if the processing period or IRPP has been extended by asking the applicant for a further specified period and the applicant applies for external review during the extended processing period.

Refer to ***Timeframes under the RTI Act*** (guideline under development) for more information.

#### Judicial function decisions

A *judicial function decision* is a decision under section 32(1)(b) or 78J(1)(b) of the RTI Act that all or part of an application is outside the scope of the Act because of schedule 2, part 2, items 1-8.

Schedule 2, part 2, items 1-8 list the entities which are excluded from the RTI Act for their judicial or quasi-judicial functions. The Office of the Information Commissioner is a quasi-judicial entity whose external review functions are quasi-

judicial functions, and on this basis the processing files for prior access and amendment applications that were externally reviewed are excluded.<sup>2</sup>

Because judicial function decisions are excluded from the definition of *reviewable decision*,<sup>3</sup> they cannot be internally or externally reviewed. They can, however, be appealed to the Queensland Civil and Administrative Tribunal (**QCAT**) under section 119(2) of the RTI Act.

If an agency makes a reviewable decision and a judicial function decision on the same application, the applicant has the right to apply for an internal or external review of the reviewable decision and appeal the judicial function decision to QCAT.

Refer to ***Applications outside the scope of the Act*** (guideline under development) for more information.

### Internal review

Internal review is a review by the agency that made the reviewable decision. All decisions, including sufficiency of search, can be internally reviewed except for:<sup>4</sup>

- a judicial function decision
- a decision on an internal review application
- a decision made **personally** by the principal officer or Minister<sup>5</sup>
- a healthcare decision
- a deemed decision, because it is taken to have been made by the principal officer or Minister; and
- a decision about the amount of the charge in a charges estimate notice.

An internal review application must comply with section 82 of the RTI Act and be lodged with the agency within 20 business days of the date of the reviewable decision. The agency has the discretion to accept it after this time.

An internal review decision must be delivered by the end of the IRPP. The IRPP starts as 20 business days from the day the agency has a valid internal review application. It is extended by five business days if the applicant only provides a postal address for communication and can be extended by requesting one or more further specified periods of time under section 82A(2).

If an internal review decision is not given to the applicant by the end of the IRPP, the principal officer or Minister is taken to have affirmed the original decision.

Refer to ***Conducting an Internal Review*** and ***Timeframes under the RTI Act*** (under development) for more information.

<sup>2</sup> *T71 and Queensland Police Service* [2022] QICmr 10 (4 March 2022). This includes access and amendment application made under the *Information Privacy Act 2009* (Qld) prior to the commencement of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld).

<sup>3</sup> By schedule 4A, section 1(a) and 2(a) of the RTI Act.

<sup>4</sup> Generally, see section 81 of the RTI Act. See also schedule 4A and section 119(2) of the RTI Act regarding judicial function decisions and sections 46 and 78R of the RTI Act regarding deemed decisions.

<sup>5</sup> If the decision maker is acting under delegation or direction of an agency's principal officer or a Minister then an internal review can be made.

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## External Review

An external review is a review by the Information Commissioner of a reviewable decision. A judicial function decision and a decision about the amount of the charge stated in a charges estimate notice cannot be externally reviewed.<sup>6</sup>

An external review application must comply with section 88 of the RTI Act and be lodged with the Office of the Information Commissioner within 20 business days of the date of the reviewable decision. The Information Commissioner has the discretion to accept it after this time.

Refer to ***Explaining your review rights*** and ***What to expect at external review*** (under development) for more information.

## Informal resolution

The Information Commissioner will attempt to resolve reviews informally. Section 94A of the RTI Act supports informal resolution by authorising access by agreement, without a formal decision.

## Referral back to the agency

If the reviewable decision was a deemed decision, under section 93 of the RTI Act, the Information Commissioner can give the agency extra time to finish processing the application and make a considered decision.

If additional documents falling within the scope of an access application are identified during an external review, section 105A of the RTI Act allows the Information Commissioner to consult with the agency and refer those documents back to the agency to make a considered decision. On the day of referral, 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.

Also, if an agency's decision is a *relevant decision* that addresses certain matters other than access to the requested documents,<sup>7</sup> and the Information Commissioner would set aside the agency decision and believes it would be more efficient and effective for the agency to make a decision about access, sections 110A and 110B of the RTI Act allow the Commissioner to consult with the agency and direct the agency to make a decision about access. A new, fully compliant application will be taken to have been made 21 business days after the Commissioner gives notice of this.

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<sup>6</sup> See schedule 4A and section 119(2) of the RTI Act regarding judicial function decisions and section 86 of the RTI Act regarding amount of charges.

<sup>7</sup> See definition of *relevant decision* in section 110A(5) and 110B(5) of the RTI Act.



**For additional IPOLA assistance, please contact the IPOLA team by email [IPOLA.Project@oic.qld.gov.au](mailto: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](mailto:enquiries@oic.qld.gov.au)**

*Published and Last Updated July 2024*