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## Interpreting the Legislation – *Right to Information Act 2009* and *Information Privacy Act 2009*

### Who can make decisions under the RTI Act and the IP Act?

Section 30 and 31 of the *Right to Information Act 2009*  
Section 50 and 51 of the *Information Privacy Act 2009*

- 1.0 Overview
  - 2.0 Who can make decisions under the RTI Act and IP Act?
  - 3.0 Who is a principal officer?
  - 4.0 Power to deal with an application may be delegated or directed to another person
  - 5.0 Delegations and directions must be in writing
  - 6.0 'Dealing with' the application
  - 7.0 Power to revoke a delegation
  - 8.0 Exception to the delegations power
  - 9.0 Protections and offences
  - 10.0 Appropriate robust discussion
- Appendix 1: Examples of instruments of delegation

#### 1.0 Overview

This Guideline discusses who can make decisions under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup>. It also provides examples of instruments of delegation (documents delegating authority) and an explanation of the RTI Act's protection and offence provisions.

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<sup>1</sup> And the *Information Privacy Act 2009* (Qld) (**IP Act**); references to the RTI Act in this guideline include the equivalent section of the IP Act and references to access applications include amendment applications.



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**2.0 Who can make decisions under the RTI Act?**

The principal officer of an agency must deal with RTI applications unless the power to deal with an application is delegated.<sup>2</sup> Decision making is part of dealing with an application, along with a range of matters relating to an application including:

- the systems, structures, processes and resources to be allocated to dealing with an access application; and
- taking reasonably practicable steps to obtain the views of a relevant third party when it may be reasonably expected they would be concerned about a decision to release information.

A Minister is required to deal with an application, unless they have conferred their decision making authority by direction.<sup>3</sup>

**3.0 Who is the principal officer?**

*Principal officer* is defined in schedule 5 of the RTI Act. The below table sets out who the principal officer is for each type of agency.

<b>Agency</b>	<b>Principal Officer</b>
Departments	The chief executive
Public authorities with a principal officer declared by regulation	The holder of the office declared by regulation to be the principal officer
Public authorities constituted by one person	The person who constitutes the public authority
Public authorities constituted by two or more persons	The person who is entitled to preside at a meeting at which the presiding person is present.
Local governments	The chief executive
Universities <sup>4</sup>	The Office of the Vice-Chancellor
Government owned corporations and their subsidiaries	The chief executive

<sup>2</sup> Section 30(1) of the RTI Act and section 50(1) of the IP Act.

<sup>3</sup> See section 31 of the RTI Act and section 51 of the IP Act. Minister includes an Assistant Minister.

<sup>4</sup> See section 10 of the *Right to Information Regulation 2009*.



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**4.0 Power to deal with application may be delegated or directed to another person**

**4.1 *Minister may direct another person***

An application for access to a document of a Minister may be dealt with by the Minister or such person as the Minister directs.<sup>5</sup> There is no requirement that the person be a member of staff of the Minister's Office.

**4.2 *Principal officer may delegate***

The RTI Act allows principal officers to delegate their power to deal with access applications to another officer of the agency.<sup>6</sup>

With the exception of local governments<sup>7</sup>, principal officers may also delegate their powers to the principal officer of another agency, provided the second principal officer consents. This power may then be sub-delegated within the second agency.<sup>8</sup>

**4.3 *Delegations and directions may be limited***

Any delegation or direction may be general, limited to a specific function, limited to part of an application (for example, a person may be delegated or directed to deal only with third party consultation), limited to a specific position or valid for a specified period of time.

Once a delegation or direction is given, the officer assumes responsibility for exercising the function or power that has been given to them by the principal officer or Minister. A delegation or direction can be withdrawn at any time, either generally or for a specific application.

**4.4 *Who is an 'officer of the agency'?***

Principal officers can delegate to an 'officer of the agency'. An officer of the agency<sup>9</sup> includes the agency's principal officer, a member of the agency, a member of the agency's staff and a person 'employed by or for' the agency.

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<sup>5</sup> Section 31 of the RTI Act and section 51 of the IP Act.

<sup>6</sup> Section 30(2) of the RTI Act; section 50(2) of the IP Act, which also applies to amendment applications.

<sup>7</sup> As clarified in section 30(3) of the RTI Act and section 50(3) of the IP Act.

<sup>8</sup> See section 6.0 of this Guideline for more detail on instruments of delegation and Appendix 1 for sample templates of instruments of delegation.

<sup>9</sup> Schedule 5 of the RTI and IP Acts.



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**Example: A person ‘employed by or for’ an agency**

Joe Bloggs is employed by the Department of Excellent Environment (DEE). His duties include providing secretarial support to the Queensland Council of Heritage (QCOH), a separate statutory body and agency as defined in the RTI Act. The principal officer of the QCOH can delegate the power to deal with their access applications to Joe because, while Joe is employed *by* the DEE, he is also employed *for* the QCOH, making him an officer of the QCOH.

**5.0 Delegations and directions must be in writing**

Delegations and directions must be made in writing and signed by the person conferring the power.<sup>10</sup> They can confer all of the powers to deal with applications or limit the powers as discussed above.

Section 27A(1) of the *Acts Interpretation Act 1954* (Qld) provides that power may be delegated to a person by name, or to an officer by reference to position title. A delegation conferred on a position title, rather than to an individual by name, prevents a fresh delegation having to be made whenever the individual is absent, for example, takes leave, acts in other positions, or permanently vacates the position.

Some examples of instruments of delegation are contained in Appendix 1.

Delegating or directing their power does not prevent the original holder from exercising their power.<sup>11</sup> Despite that, the delegated officer must exercise their delegated power independently and not under the direction of another person. Any attempt to do so may attract the offences discussed below.

A valid instrument of delegation from the principal officer or written direction from the Minister removes any doubt about whether the decision is lawfully made by a person other than the principal officer or Minister.

**Hint**

Consider developing a process within the agency that ensures regular reviews of the instruments of delegations to ensure currency of current agency structure, staff changes, renaming of roles, amalgamations of agencies and amendments to legislation etc.

<sup>10</sup> Section 27A(3) of the *Acts Interpretation Act 1954* (Qld).

<sup>11</sup> Section 27A(10) of the *Acts Interpretation Act 1954* (Qld).



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**6.0 'Dealing with' the application**

**6.1 *Decision making***

If the officer is delegated to deal with applications under chapter 3, parts 1-7 of the RTI Act,<sup>12</sup> they have the power to process applications and make decisions under the legislation (unless the legislation specifies that the decision must be made by the principal officer or Minister).<sup>13</sup> This can include determining whether applications are compliant, which Act to process under, and whether any information is exempt or contrary to the public interest.

**6.2 *Consultation***

In addition to decision making, the process of consulting with third parties may also be the responsibility of the duly delegated officer. In this case it will be the delegated officer's responsibility to determine whether there is a reasonable expectation that disclosure of the information would be of concern to the third party.

**6.3 *Internal review***

Part 8, chapter 3 of the RTI Act provide for internal review of reviewable decisions. Reviewable decisions are defined in schedule 5 of the RTI IP Acts.

An officer who deals with internal review applications must have an instrument of delegation or direction by the relevant principal officer or Minister to process internal review applications.

**7.0 *Power to revoke a delegation***

Under section 27A(2) of the *Acts Interpretation Act 1954* (Qld), a delegation may be wholly or partly revoked by the principal officer or Minister. A delegation may be withdrawn at any time including before a decision is made in a particular case. Any revocation of the delegation must be in writing.

**8.0 *Exceptions to the delegations power***

**8.1 *Deemed decisions***

If an applicant is not given a written notice of decision by the end of the processing period, the RTI Act provides that a deemed decision to refuse access is taken to have been made by the principal officer or Minister.<sup>14</sup> The principal officer or Minister must give a prescribed

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<sup>12</sup> Or delegated under chapter 3 parts 1-7 of the IP Act.

<sup>13</sup> For example, healthcare decisions. See section 10.0 of this Guideline for further information.

<sup>14</sup> Section 46 of the RTI Act and section 66 and 71 of the IP Act.



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written notice of the deemed decision and refund the application fee as soon as practicable.<sup>15</sup>

The act of preparing, signing and issuing the notice of deemed decision can be done by a delegated officer as part of dealing with the application, because it is the RTI Act itself that declares the decision is taken to have been made by the principal officer or Minister.

## **8.2 Healthcare decisions**

Section 30(5) of the RTI Act provides that a principal officer may not delegate the powers to deal with an application in relation to:

- making a 'healthcare decision'<sup>16</sup>
- appointing a healthcare professional to make a healthcare decision<sup>17</sup>

There are similar restrictions on Ministers in relation to making healthcare decisions and appointing a healthcare professional to make a healthcare decision.<sup>18</sup> For more information refer to OIC's Guideline, [Making Healthcare Decisions](#).

## **8.3 Decisions about financial hardship for non-profit organisation**

A decision that a non-profit organisation is in financial hardship can only be made by the Information Commissioner.<sup>19</sup> An agency's principal officer or a Minister cannot make this decision. See [Applying for financial hardship - organisations](#) for more information.

## **9.0 Protections and Offences**

### **9.1 Protections**

The RTI Act provides that when access and/or publication of a document was—

- required or permitted under the RTI Act; and
- it was authorised by a decision maker in the genuine belief that it was required or permitted under the RTI Act

—then no act of defamation or breach of confidence lies against the State, agency, Minister or decision maker.<sup>20</sup>

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<sup>15</sup> Refund of application fee is for RTI applications only (section 46 of the RTI Act) and section 66 of the IP Act.

<sup>16</sup> 'Healthcare decision' is defined in section 30(6) of the RTI Act and section 50(6) of the IP Act.

<sup>17</sup> Section 30(5) of the RTI Act and section 50(5) of the IP Act.

<sup>18</sup> Section 31(2) of the RTI Act and section 51(2) of the IP Act.

<sup>19</sup> Section 67 of the RTI Act.

<sup>20</sup> Sections 170-174 of the RTI Act; sections 179-183 of the IP Act.



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Similarly, if access was given to a document or publication occurred and the above criteria were satisfied, then the person authorised or anyone concerned in giving or publishing the document does not commit a criminal offence.

**9.2 Offences**

It is an offence for a person to give direction (either orally or in writing) to the decision maker, instructing them to make a decision that the decision maker does not believe is correct. The person giving or attempting to give the direction can be fined a maximum of 100 penalty units.

It is also an offence for a person to give direction (either orally or in writing) to an employee of the agency or Minister involved in matters under the RTI Act, instructing them to act contrary to the requirements of the Act. There is a maximum penalty of 100 penalty units.

**10.0 Discussing the application**

Although it is an offence to give a direction to a decision maker, it is important to distinguish this from the situation where aspects of an application are debated internally. An application may raise a number of considerations which are complex and may cause the decision maker to discuss matters with colleagues and senior officers, either to canvass views or to obtain guidance on, for example, the application of an exemption provision or a public interest factor.

Discussions should be informed by the pro-disclosure bias and the limited number of grounds on which access may be refused under the Act. Information resources from, and previous cases of, the Information Commissioner may assist in reaching a fully informed decision. It is important that delegated officers know they are required by law to freely exercise their delegated powers to reach a decision independently and without the undue influence or direction of any person.

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](mailto:enquiries@oic.qld.gov.au).

**This guide 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](mailto:feedback@oic.qld.gov.au)

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**Appendix One: Examples of instruments of delegation**

Examples of different types of delegations below, including:

Example 1 - delegation within an agency

Example 2 - delegation to another agency's principal officer

Example 3 – subdelegation.

*The words used are suggestions only and will need to be adapted as necessary by agencies (for example, it may be a delegation to a specific position or it may be a limited delegation).*

**Example 1**

**Delegation within an agency: access application under the RTI Act and access and amendment applications under the IP Act**

Under section 30(2) of the *Right to Information Act 2009* (RTI Act), I, [name 1] [position title 1] as principal officer of [agency 1] delegate my powers in respect of application for access under chapter 3, parts 1 to 8 of the RTI Act, to any officer for the time that they are appointed as [position title 2].

Under section 50(2) of the *Information Privacy Act 2009* (IP Act), I, [name 1] [position 1] as principal officer of [agency 1] also delegate my powers in respect of applications for access and amendment under chapter 3, parts 1 to 8 of the IP Act, to any officer for the time that they are appointed as [position title 2].

Dated this [day] of [month] [year]

[Signature of name 1]

[Name 1]

[Position title 1]

**Example 2**

**Delegation from first agency to a second agency**

Under section 30(3) of the *Right to Information Act 2009* (RTI Act), I, [name 1] [position title 1] as principal officer of [agency 1] delegate my powers in respect of applications for access under chapter 3, parts 1 to 8 of the RTI Act, to the [position title 2] as principal officer of [agency title 2] with their agreement.

Under section 50(3) of the *Information Privacy Act 2009* (IP Act), I, [name 1] [position title 1] as principal officer of [agency 1] also delegate my powers under chapter 3, parts 1 to 8 of the IP Act, to the [position title 2] as principal officer of [agency title 2] with their agreement.



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Dated this [day] of [month] [year]

[Signature of name 1]

[Name 1]

[Position title 1]

[Agency name 1]

[Signature of name 2]

[Name 2]

[Position title 2]

[Agency name 2]

### **Example 3**

#### **Sub-delegation within second agency after delegation from first agency**

Under section 30(3) of the *Right to Information Act 2009* (RTI Act) and section 50(3) of the *Information Privacy Act 2009* (IP Act), on [day] of [month] [year], [name 1] [position title 1] as principal officer of [agency title 1] delegated their powers in respect of applications for access under chapter 3, parts 1 to 8 of the RTI Act and applications for access and amendment under chapter 3, parts 1 to 8 of the IP Act, to the [position title 2] as principal officer of [agency 2].

Under section 30(4) of the RTI Act, I, [name 2] [position title 2] as principal officer of [agency 2] hereby subdelegate my powers in respect of [agency 1] applications for access under chapter 3, parts 1 to 8 of the RTI Act to any officer for the time that they are appointed as [position title 3].

Under section 50(4) of the IP Act, I, [name 2] [position title 2] as principal officer of [agency 2] also hereby subdelegate my powers in respect of [agency 1] applications for access and amendment under chapter 3, parts 1 to 8 of the IP Act to any officer for the time that they are appointed as [position title 3].

Dated this [day] of [month] [year]

[Signature of Name 2]

[Name 2]

[Position title 2]