



Applying the legislation

GUIDELINE *Right to Information Act 2009 and Information Privacy Act 2009* **Starter guideline and checklists for new agencies**

Purpose

It is easier to ensure compliance with Right to Information and Information Privacy obligations from the start than to retrofit an organisation. The purpose of this guideline is to assist newly established agencies to do this by providing an overview of obligations contained in both the *Right to Information Act 2009* and the *Information Privacy Act 2009*. Tips on ensuring basic compliance together with information about tools and resources to support compliance can be accessed at www.oic.qld.gov.au.

The Right to Information and Information Privacy Acts in a nutshell

The object of the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**) is to give a right of access to public sector information unless it is, on balance, contrary to the public interest to do so. The starting point for all public sector documents is that they are open to the public. Agencies have an obligation to proactively release information, maximise disclosure, and otherwise provide administrative release.

Access applications are considered a last resort. Possible criticism of the government, loss of confidence in the government or the mischievous use of information by applicants are factors not to be taken into account in deciding whether information is to be disclosed.

The IP Act also provides for the fair collection and handling of personal information by the public sector.

How the RTI Act and the IP Act interact

Formal applications for information can be made under the RTI Act for any document of an agency. RTI decision makers are required to have a pro-disclosure bias and documents must be released unless it is contrary to the public interest to do so. It is usually contrary to the public interest to disclose personal information to a third party. The IP Act requires agencies to protect the personal information it holds and prevent it from being disclosed inappropriately.

These two Acts work together to ensure that there is an appropriate balance between privacy protection and government openness. Personal information is protected unless there is a legal authority to disclose it. If a person applies for someone else's personal information under the RTI Act, there is scope to withhold it if releasing it would be contrary to the public interest. If the decision maker decides to release it, the person the information is about may have to be consulted about the release.



How to use this guide

This guide provides a high-level checklist to follow when initially establishing an agency. This initial implementation checklist is located in Appendix 1.

It also includes more detailed checklists for officers responsible for setting up systems and procedures along with a brief explanation of the RTI and IP obligations related to the checklists. These are located in Appendices 2 through 4.

Ensuring effective information practices

Once the agency has been established, and the initial tasks in this guideline have been completed, the Office of the Information Commissioner's (OIC) Self Assessment Tool can be used to audit the agency's compliance with its RTI and IP obligations. One of OIC's functions is to audit agency compliance and report to Parliament. The Self Assessment Tool contains the standards against which OIC audits.

Leadership

The independent report into Queensland's information access laws *The Right to Information: Reviewing Queensland's Freedom of Information Act*¹ (The Solomon Report) highlighted the need for strong leadership in ensuring successful RTI implementation and a shift in focus from processing RTI applications to effective information management practices². Audits undertaken by OIC have shown that effective leadership is an important factor in information reform.

For additional information and assistance please contact the Enquiries Service on 07 3234 7373 or email 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

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

¹ Report by the FOI Independent Review Panel, June 2008
<http://www.rti.qld.gov.au/__data/assets/pdf_file/0019/107632/solomon-report.pdf>
² Recommendation 127, The Solomon Report



Appendix 1

Initial implementation checklist

Leadership	Appoint an SES officer to coordinate and lead the implementation of RTI reforms in each agency.	<input type="checkbox"/>
	Demonstrate Executive Management team's active commitment to implement RTI reforms.	<input type="checkbox"/>
	Executive Management team understands the inclusion of RTI reforms in performance agreements.	<input type="checkbox"/>
	Appropriate decision making framework, including delegations, policies and procedures, in place for the administrative release of information.	<input type="checkbox"/>
	Make regular statements promoting the RTI reforms as part of how all public servants do their work.	<input type="checkbox"/>
Proactive Disclosure	Identify data sets that could be proactively published.	<input type="checkbox"/>
	Ensure procedures are in place to regularly identify new and existing data sets for publication.	<input type="checkbox"/>
	Identify barriers to greater disclosure and take action to address them.	<input type="checkbox"/>
	Ensure published information is accessible according to the principles in <i>Information Standard 26 - Internet</i> .	<input type="checkbox"/>
	Review policies and procedures to enable proactive release of government held information.	<input type="checkbox"/>
	Develop an action plan to address any barriers to implementation of RTI reforms.	<input type="checkbox"/>
	Ensure a Publication Scheme is designed and published to the agency website.	<input type="checkbox"/>
	Introduce processes to enable regular review and updating of Publication Scheme contents.	<input type="checkbox"/>
	Introduce processes to ensure regular consideration and review of RTI releases material for publication to the Disclosure Log.	<input type="checkbox"/>



	Create an information management strategy that is consistent with the objects and principles of the RTI Act.	
	Develop agency content management strategies to facilitate the proactive electronic release of information in machine readable and useable formats.	
RTI and IP Compliance	Compliance with the mandatory requirements of the RTI Act	<input type="checkbox"/>
	Compliance with the mandatory requirements of the IP Act	<input type="checkbox"/>
	Develop contract precedents which incorporate IP Act obligations and develop material to inform contracted service providers about their obligations under the IP Act.	<input type="checkbox"/>
	Ensure Information Privacy is incorporated into the RTI decision maker's role if there is no separate Privacy Officer role.	<input type="checkbox"/>
	Establish an appropriate complaints management framework for managing privacy complaints.	<input type="checkbox"/>
	Put in place appropriate financial processes to disburse funds received under the RTI Act, and to undertake appropriate reconciliation.	<input type="checkbox"/>
	Ensure application management tools are in place to capture the data required for RTI reporting.	<input type="checkbox"/>
	Consider business intelligence strategies which incorporate the ability to report on compliance with the RTI Act.	<input type="checkbox"/>
Recordkeeping	Compliance with the <i>Public Records Act 2002</i> .	<input type="checkbox"/>
	Establish record-keeping systems compliant with Recordkeeping (IS40), Information Security (IS18) and Retention and Disposal of Public Records (IS31).	<input type="checkbox"/>
	Inform staff of best practice records management and ensure they are aware of the compliance and management obligations under the <i>Public Records Act 2002</i> .	<input type="checkbox"/>



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	Promote recordkeeping practices and encourage staff to attend training provided through Queensland State Archives	<input type="checkbox"/>
	Create an information management strategy consistent with the RTI principles.	<input type="checkbox"/>
Training	Offer information sessions providing an overview of the RTI and IP Act.	<input type="checkbox"/>
	Include RTI and IP information in induction training packages. OIC has online training resources for this purpose that can be accessed by all agencies through the OIC website.	<input type="checkbox"/>
	Implement ongoing training schedules to improve RTI and IP awareness for all officers.	<input type="checkbox"/>
Information Technology	Identify case management tools to manage RTI and IP applications and IP complaints.	<input type="checkbox"/>
	Consider innovative ways to use electronic documents records management systems (if applicable) to facilitate proactive release of information.	<input type="checkbox"/>
	Implement tools for document classification on creation to facilitate maximum disclosure of information.	<input type="checkbox"/>
	Consider future storage requirements required by the proactive release and publication of information.	<input type="checkbox"/>
	Consider network capacity and bandwidth implications of providing more information electronically.	<input type="checkbox"/>



Appendix 2

The Push Model

Key factors in the push model of proactive information release are a publication scheme, a populated disclosure log and an administrative access scheme.

The publication scheme is a method of organising agency information under seven headings in order to make it readily available to the public. A Disclosure Log makes information released under the RTI Act available to the public. An administrative access scheme is a policy or legislation which makes certain kinds of information available to public without a formal application. Publication schemes should contain documents which the public and media would want to access as a matter of course.

Publication Schemes			
Criteria	More information	Y	N
Is the Publication Scheme linked from the homepage of the organisation?			
Is the standard text used to introduce the Publication Scheme?	<i>The standard text is: Our publication scheme describes and categorises information routinely available from the department. It has been developed to give the community greater access to information held by government.</i>		
Are the seven categories of information covered in the Publication Scheme?	<i>The seven categories are: About Us, Our Services, Our Finances, Our Priorities, Our Decisions, Our Policies, Our Lists.</i>		
If there are terms and conditions for accessing the information, are these clearly set out?	<i>If there are charges for the information, these should be specified; if the information has to be applied for in a certain way, this should be made clear.</i>		



Publication Schemes			
Criteria	More information	Y	N
If a document cannot be made available for direct linkage, is there a description of the document?	<i>Ideally documents should be uploaded so that people can access them online. If this is not possible, for example due to the size of the document, it is important to describe it accurately.</i>		
Is there information in each category of the Publication Scheme?			
Is someone responsible for keeping the Publication Scheme updated?	<i>It is important to have a senior or executive level officer who is responsible for the publication scheme and any administrative access arrangements.</i>		

For more information please see the OIC Guideline *Proactive Disclosure and Publication Schemes* at www.oic.qld.gov.au.

Disclosure Logs			
Criteria	More information	Y	N
Is there a disclosure log on the website?			
Is there appropriate text describing the disclosure log?	<i>For example, Our disclosure log provides details of information released in response to non-personal RTI applications. It contains a description of the information released and, where possible, a link to the relevant documents.</i>		
Is the disclosure log easy to find from the home page?			
Are there any documents in the disclosure log?	<i>If no RTI applications have been decided there will be no documents to go in the disclosure logs.</i>		



For more information please see the OIC Guideline *Disclosure Logs* at www.oic.qld.gov.au.

Administrative access scheme			
Criteria	More information	Y	N
Is there a policy in place which allows people to request certain kinds of information?	<i>If there are non-sensitive documents or information that could be of interest to the general public and have no restrictions on making them available (but are not suitable for the publication scheme) consider allowing people to access them administratively.</i>		
Is it clearly set out on the website?			
Are there contact details for the person responsible for the administrative access scheme?			

For more information please see the OIC Guideline *Administrative Release of Information* at www.oic.qld.gov.au.



Appendix 3

Privacy compliance – privacy plan and collection notice checklists

The privacy principles in the IP Act set out rules for the management of personal information. These principles include:

IPP 5, which requires the agency to make the public generally aware of the personal information it holds, why it holds it and how it can be accessed or amended.

IPP 2, which requires that, when the agency collects personal information from the individual it is about, the individual is told why it is being collected, any legal authority for its collection and anyone to whom it will be given (referred to as a collection notice).

Privacy plan and collection notices			
Criteria	More information	Y	N
Does the website mention privacy?			
Is there a link to a privacy page in the footer of the website?			
Is there information on the agencies privacy policies and procedures?	<i>Agency-wide compliance with the privacy principles can be assisted by having clear policies and procedures about personal information and privacy within the agency.</i>		
Is there information available on how individuals can access their personal information?			
Is there information about how personal information can be amended?			
Are there details of the kinds of personal information held by the agency?			



Privacy plan and collection notices			
Criteria	More information	Y	N
Is there information about how to make a privacy complaint?	<i>Good complaints procedures can greatly increase the chances of resolving a privacy complaint.</i>		
Is there a collection notice included with any email addresses on the website?			
Is there information in the privacy statement about collection of personal information on the website?	<i>For example, cookies may collect personal information about visitors to the website.</i>		
Are there contact details for someone in the agency the public can talk to about privacy?			
Is there a privacy plan available?			

For more information please see the OIC Guidelines *Collection Notices – making people generally aware* at www.oic.qld.gov.au.



Appendix 4

Access application compliance checklists

If information cannot be given out informally then people may choose to make a formal application under the RTI Act or, if it is only for their personal information, under Chapter 3 of the IP Act. There are specific processes set out in the RTI and IP Acts for handling these applications and strict timeframes that must be adhered to.

RTI and IP Access applications			
Criteria	More information	Y	N
If the principal officer of the agency is not making the decisions him or herself: is there a delegation in place to another officer?	<i>Delegations need to be in writing, and should name an officer or position with the authority to make decisions under the RTI or IP Acts.</i>		
Has the delegated officer received the necessary training and/or support?	<i>OIC provides specific training for officers processing applications and making decisions under the RTI and IP Acts.</i>		
Is there a process in place for retrieving documents from throughout the agency when an access application is received?			
Do all agency officers understand their RTI Act obligations?	<i>It is important that information about the RTI Act is given to all officers, so they understand that all relevant documents must be sent to the RTI decision maker and that there are strict time limits under the Act.</i>		

For more information please see the OIC Guideline *Simple guide to navigating the RTI and IP* legislation at www.oic.qld.gov.au.