



## Applying the legislation

### GUIDELINE – *Right to Information Act 2009* and *Information Privacy Act 2009* **Transferring applications**

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

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#### 1.0 Overview

Access applications made to one agency under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup> for access to documents can be transferred to another agency<sup>2</sup> if they meet certain criteria. An application transferred from one agency to another is taken to have been made to the other agency.<sup>3</sup>

#### 2.0 When can an application be transferred?

An application can only be transferred if:

- the original agency does not have any or all of the documents applied for
- the original agency knows that another agency has some or all of the documents applied for; and
- the other agency consents to the transfer.<sup>4</sup>

##### 2.1 Applications sent to the wrong agency

Where an application is simply sent to the wrong agency it does not have to be transferred under the transfer provisions. An application is sent to

<sup>1</sup> Under section 57 of the *Information Privacy Act 2009* (Qld) (**IP Act**), access and amendment applications can also be transferred. References in this guideline to the RTI Act include the IP Act.

<sup>2</sup> In this guideline, agency includes a Minister.

<sup>3</sup> See section 38(3) of the RTI Act and section 57(3) of the IP Act.

<sup>4</sup> See section 38 of the RTI Act and section 57 of the IP Act.



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the wrong agency when the other agency's name is written at the question 'Which agency are you applying to'.

For example, if the Department of Dogs receives an application form that clearly states the applicant is applying to the Department of Cats, they can return it to the applicant and advise them of the correct address for the Department of Cats. Depending on the circumstances, they may wish to contact the Department of Cats and check if they are happy to have it forwarded to them.

This can't apply to applications made using the online form, because the agency selected from the drop down box at 'Which department are you applying to?' is the agency to which the application is made. If the agency doesn't hold the documents, it will need to consider transferring the application to the agency that does.

### **3.0 The other agency must consent to the transfer**

An application can only be transferred from the original agency to the other agency if the other agency consents to the transfer.<sup>5</sup> Generally, the other agency would agree to accept the transfer unless there are unusual circumstances. For example, if it is being transferred at the end of the processing period or the other agency does not hold the documents.

If the other agency declines to accept the transfer, and the applicant will not withdraw or alter the application and apply directly to the correct agency, the original agency must make a reviewable decision on the application.

This may be a noncompliance decision<sup>6</sup> or other decision related to a defect in the application<sup>7</sup> or, if the application was defect free, it may be a decision to refuse access to some or all of the documents on the grounds that they are nonexistent or unlocatable,<sup>8</sup> because they are not in the original agency's possession or control.

### **4.0 Full or part transfer: the other agency has some or all of the documents**

#### **4.1 *Transferring an application in full***

If the original agency has no documents within the scope of an application, but it knows another agency does, it can transfer the entire application to that agency if they consent.

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<sup>5</sup> See section 38(2)(b) of the RTI Act and section 57(2)(b) of the IP Act.

<sup>6</sup> Under section 33 of the RTI Act.

<sup>7</sup> For example, a decision under section 54 of the IP Act.

<sup>8</sup> See section 52 RTI Act.



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It's important to be careful when deciding the agency has no documents, particularly during or after a Machinery of Government change. Even where business unit documents are transferred to another agency, corporate records relating to that business unit may have been kept, such as internal audit or ethical standards documents.

The application fee must be transferred with the application,<sup>9</sup> along with any evidence of identity and/or agent authority documents.

### 4.2 *Part-transfer of an application*

Where the original agency only has some documents in scope of the application, but it knows another agency has other documents in scope, the application can be part-transferred if the other agency consents.

When an RTI application is part-transferred the applicant will need to pay a further application fee<sup>10</sup> to the other agency.<sup>11</sup> This is because their single RTI application has become two RTI applications. It may be worth discussing this with the applicant before attempting to part-transfer the application, as the applicant may prefer to remove those documents from their scope.

If the part of the application *retained* by the original agency is limited to documents containing the applicant's personal information, the application fee must be transferred to the other agency.

If the part of the application *transferred* to the other agency relates only to documents containing the applicant's personal information, the applicant will not need to pay a further application fee.

The applicant will not need to provide new evidence of identity and/or authority documents (if relevant) as copies can be provided by the original agency.

### 5.0 *Timeframes for transferred applications*

When an agency agrees to accept a transferred application, they get extra time to make a decision. This is called the transfer period<sup>12</sup> and it can never be more than ten business days.

The transfer period is whichever is the shorter of:

- ten business days; or

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<sup>9</sup> Agencies may wish to put their own arrangements in place where they regularly transfer applications.

<sup>10</sup> This does not apply where the application has been made under the IP Act.

<sup>11</sup> See section 38(5) of the RTI Act.

<sup>12</sup> Under section 18(2)(a) of the RTI Act and section 22(2)(a) of the IP Act.



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- a period starting on the day the original agency receives the application and ending on the day it is transferred to the other agency.

The transfer period begins on the next business day after the original agency receives the application. The processing period (for the other agency) begins on the next business day after the transfer period ends.

For more information see: *How to calculate timeframes*.

**5.1** *If it takes more than ten business days to transfer*

If it takes more than ten business days to transfer an application, the processing period for the transferred application starts for the other agency on the first business day after the tenth business day of the transfer period—even if the application is still with the original agency.

**5.2** *Part transfer of RTI application, further application fee needed*

Where an RTI application is part-transferred, and the applicant will need to pay a further application fee to the other agency, the processing period will not start for the other agency until the application fee is paid.

**6.0** **Advice to applicant**

As a matter of good practice, the original agency should advise the applicant:

- that their application has been transferred, in full or in part
- which agency or agencies their application has been transferred to, including contact details
- if a further application fee may be payable; and
- the date their application was transferred.

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).

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