



Applying the legislation

GUIDELINE *Information Privacy Act 2009 and Right to Information Act 2009*

Dealing with access applications made under the wrong Act

This Guideline will assist decision makers to deal with access applications made under the *Information Privacy Act 2009* (Qld) (**IP Act**) that are not limited to personal information and *Right to Information Act 2009* (Qld) (**RTI Act**) applications that could have been made under the IP Act.

The guideline [Which Act applies?](#) has more information about making this determination.

IP applications not limited to personal information

The IP Act only allows individuals to apply for documents which contain their personal information.¹ If you receive an access application under the IP Act² and it seeks access to documents that will not contain the applicant's personal information you must follow³ section 54 of the IP Act.

How do I apply section 54 of the IP Act?

There are two options for the application to proceed: switch the application to the RTI Act or alter the scope to cover only documents containing the applicant's personal information. However, an agency cannot simply decide to do one or the other. You must follow the process set out in section 54.

The first step is to contact the applicant and advise them that their application as currently written cannot be made under the IP Act. Remember that applicants may not be familiar with the kinds of documents held by agencies and what they are likely to contain. Providing the applicant with information about why all the documents will not contain their personal information will assist them in rectifying their application. An applicant must be given a reasonable opportunity to either:

- alter the scope so that the application can be made under the IP Act, or
- pay an application fee so that it can be dealt with under the RTI Act.

You should also consider explaining your agency's record keeping practices and what type of documents were captured by the original scope. This will help the applicant decide whether to pay the application fee so the application can be dealt with under the RTI Act or to amend their scope to only seek documents which contain their personal information.

The flowchart in Appendix 1 will assist you in applying section 54.

¹ Section 40 IP Act.

² Applications made on the approved form will be made under the IP Act if the applicant ticks the box that states they are seeking access to personal information and there is no application fee.

³ For more information on what constitutes personal information see [What is Personal Information](#).



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Initial contact with the applicant

Section 54 of the IP Act does not require you to write to the applicant. In circumstances where the application is ambiguous, or the applicant has selected the incorrect box on the form, you should consider making telephone or email contact with them to discuss the issues. Making contact with the applicant as soon as possible can allow you to resolve the issues informally and in a timely manner.

It is good practice to confirm your conversation in writing and to make an accurate file note. This will ensure both agency and applicant clearly understand what has been agreed to.

What happens next?

There are three possible outcomes when you apply section 54 of the IP Act.

1. The applicant changes the scope of their application so they are only seeking access to documents that contain their personal information.
2. The applicant pays the application fee and the application is switched to the RTI Act.
3. The applicant neither pays the application fee nor alters the scope of their application, meaning you will have to make a decision under section 54(5)(b).

When does the processing period start if the applicant rectifies or switches?

If the applicant changes their application so it can be made under the IP Act, the processing period will begin on the next business day after the agency receives the revised scope. The day the applicant sends their revised scope in will be day zero.

If the applicant transfers their application to the RTI Act, they are taken to have made the RTI application to the agency on the day they pay the application fee. This will be day zero and the processing period will commence on the next business day.

Making a decision under section 54(5)(b) of the IP Act

If the applicant does not alter the scope or pay the application fee—or does not respond at all—you will have to again consider whether their application is one that can be made under the IP Act. If you decide that it cannot, because it is not limited to documents that contain the applicant's personal information, you must give the applicant a prescribed written notice of your decision. This is a reviewable decision and your notice must set out the applicant's review rights.

RTI applications that could have been made under the IP Act

The RTI Act allows anyone to apply to access any document of an agency. If you receive an RTI application that only seeks access to documents that contain the



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applicant's personal information, meaning it could have been made under the IP Act, you must follow the steps set out in section 34 of the RTI Act.

How do I apply section 34 of the RTI Act?

Section 34 of the RTI Act requires you to tell the applicant that they could have applied under the IP Act, with no application fee or processing charges, and that they may either:

- ask you to deal with their application under the IP Act; or
- confirm that they want the application to be processed under the RTI Act.

You have 15 business days from the date of the application to give this information to the applicant.

What do I do if the applicant asks me to deal with the application under the IP Act?

If the applicant asks you to deal with their application under the IP Act it is treated as a new application. The processing period restarts under the IP Act, and the day they requested that you to move the application to the IP Act is day zero.

You must refund the application fee as soon as practicable.

When does the application continue under the RTI Act?

You will continue to deal with the application under the RTI Act if:

- the applicant tells you they want their application to remain under the RTI Act; or
- the applicant does not, within a reasonable time, either request that you process the application under the IP Act or confirm that they want you to continue processing the application under the RTI Act.

Again, it is good practice to confirm your conversation in writing and to make an accurate file note.

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.

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



Appendix One – How to apply Section 54 of the IP Act

