Applying the legislation

GUIDELINE *Right to Information Act 2009*

RTI Myths – Busted!

Queensland's *Right to Information Act 2009* (RTI Act) recognises that government information is a public resource and that openness in government enhances the accountability of government. However, the right to information is not absolute and it is not always black and white. Some information held by government, including very sensitive information about members of the community, is protected by the RTI Act where it would be contrary to the public interest to disclose it. This guideline helps clear up some of the more common RTI myths.

Myth: Formal access under RTI is the best way to access information

Not correct. Formal access applications under RTI are intended to be a last resort. It's always better, and often simpler and faster, to give information out administratively wherever possible. Depending on the type of information, agencies could consider making it available on their website, through administrative access schemes, or in response to specific requests.

Where information is sensitive and not suitable for administrative release, a formal RTI application will be necessary. Even under the formal process, however, agencies have a discretion to disclose information that would normally be exempt from release where it is appropriate to do so.

Myth: Administrative Access schemes cost the agency money

Not correct. Giving access to information administratively is cheaper and faster than making people access it under the provisions of the RTI Act. RTI access applications require specific legislative steps and formal administrative decisions, all of which take time and attract agency resources. They may also mean your agency becomes involved in a review process, which is not available for administrative access.

Myth: Our RTI/Privacy unit is responsible for meeting our agency's responsibilities under the RTI Act

Not quite. RTI obligations extend far beyond application handling as the RTI Act explicitly provides that formal access applications are intended only as a last resort. Effective implementation of RTI obligations is everyone's responsibility – from the chief executive and senior executive throughout the agency. We all have a role to play. It is critical that agencies have a strong culture of openness establishing clear expectations for employees about disclosure and good strategic information management leadership.

Agencies need to ask their stakeholders what information they would like to access. When a new document or data is created, people need to think about proactive release on the agency website. When a member of the community asks for information, everyone in the agency needs to know how, and be ready and willing, to assist them where practicable, as part of a service culture about access to information.

Myth: Post-it notes are not documents and don't need to be disclosed

Not correct: Under the RTI Act, a person has a right to apply for documents in the possession or control of an agency or a Minister. The term 'document' captures a broad range of information formats, including hard copy and electronic files, handwritten notes, video or audio recordings and braille.

For example, correspondence, a work diary, CCTV footage, discs, tapes, post-it notes on files and emails sent or received via work email addresses fall within the scope of the RTI Act and may be disclosed. Additionally, a post-it note on a file may be a public record under the *Public Records Act 2002* and disposal must be in accordance with the relevant Retention and Disposal Schedule approved by the State Archivist.

Myth: Right to information is about open data

Not correct. Publication of datasets is an important part of opening up government-held information for the community to access and use, but RTI is broader than open data. RTI is also about other types of information such as reports, notes, audio or video recordings, correspondence, complaints and decisions, including the basis on which those decisions were made. RTI can be unique to an individual or a specific set of circumstances. This information is not available from published datasets.

Open data is one mechanism for increasing transparency and accountability of government. It complements but does not replace RTI. When publishing datasets, agencies decide what information will be published and when this information will be made available. RTI provides a legal right to access government-held information not available openly.

Myth: Only documents stored in an agency are subject to RTI

Not Correct. It's not just documents in the physical possession of an agency that are subject to the RTI Act, it's also documents in its legal control. Where an agency has a right to access documents—even if they're not currently stored at the agency's premises—and someone applies to access them, the agency will have to retrieve them. This might mean getting documents from contractors, private solicitors, or retrieving them from offsite storage.

But wait, there's more! It's not just *agency* documents that are subject to the RTI Act; it's *Ministerial* documents, too. If documents are in the physical possession or legal control of a Minister **and** they relate to the affairs of the Minister's agency, those documents can be subject to the RTI Act if the Minister receives a request.

Myth: Greater disclosure will reduce the quality of decision making

Not correct. Knowing your decision may be subject to scrutiny means that decision makers set out more clearly the reasons and basis for their decision. Also the RTI Act provides that if it is on balance contrary to the public interest to release information, it may be refused. Whether information will be disclosed depends on the circumstances of each case, including the timing of the request, whether a decision has been made, what information is publicly available, and the actual content and sensitivity of the information in question. For example, information about a high-level policy objective or government decision may have already been disclosed in media statements or during parliamentary debates (Hansard) reducing the sensitivity of subsequent policy related information.

Greater disclosure in appropriate cases enhances the quality of decision-making. For example, robust public debate and scrutiny may identify issues government has overlooked, preventing costly mistakes being made. Openness often leads to better decisions and raises public confidence in the processes of government.

Myth: Information Management Committees do not have a role to play in RTI

Not correct. The importance of leadership within all government agencies to achieve open government has been a repeated finding in compliance reviews. Leaders within agencies are expected to work with the community to identity information and methods of publishing information that might be useful to the community.

To achieve the objects of the RTI Act, each agency needs a structured and planned approach to information governance. Agency leaders are expected to make sure their agencies are equipped with systems, delegations of authority, staffing resources and training in order to meet their obligations under the RTI Act.

Myth: If information would be embarrassing to the government, or used by the applicant for mischief, an agency doesn't have to release it

Not Correct. Embarrassment to the government, or potentially mischievous actions by an applicant, are not reasons to withhold information from release. The RTI Act says that these are *irrelevant factors*, which agency decision makers are explicitly required to disregard when making decisions. Remember, though, there's nothing stopping an agency from adding context, explanation, or additional information when releasing documents. For example, when releasing raw data about performance, it can be useful to explain the data or provide a summary of what it means, relevant context and reasons for variances.

Myth: Classifying a document as confidential or sensitive means it won't be released under RTI

Not necessarily. The starting point under RTI is that all documents are open. If a document is subject to the RTI Act and is relevant to an application, an agency has to consider the document for release. All documents are considered on a case by case basis.

The classification level is taken into account, however sometimes it is clear that a document, or part of a document, is not as sensitive and should be disclosed. The passage of time since classification can also change the sensitivity and some information may have been made publically available. Certain high security level documents, such as Cabinet documents, are exempt from release. Agency decision makers will consider the nature of the document and its contents when they apply the RTI Act to protect the information which needs to be protected.

Myth: The RTI Act conflicts with the Information Privacy Act

Not correct. The RTI Act works *with* the Information Privacy Act (**IP Act**) to provide appropriate protections for personal information. The IP Act creates the everyday rules that protect personal information. The RTI Act creates an access scheme for the lawful disclosure of government held information. Privacy is appropriately protected by the RTI Act—recognised as a strong factor against disclosure and requiring people to be consulted—in a way that allows for the release of information necessary for accountable and responsible government.

Myth: Documents subject to confidentiality provisions in other Acts can't be released under the RTI Act

Not quite. The RTI Act overrides the confidentiality provisions in other Acts. This does not mean that the information will necessarily be released, but it does mean that it must be considered by the agency decision maker. Some of these confidentiality provisions—such as those in the Child Protection Act and the Adoption Act—are recognised in the RTI Act and information covered by them is exempt from release. It is also a factor against release that another Act prohibits the disclosure of information. Agency decision makers will make the appropriate decision taking into account all the provisions of the RTI Act.

Myth: We know what information people need from us

Not necessarily. Government agency stakeholders have told us about additional information they would like to access from agencies to use in ways unanticipated by government in previous compliance reviews, sometimes unrelated to that agency's business. For example, community organisations and industry can often use government data to more appropriately target their services and apply for funding grants to better service the community, where the need exists.

Community belief and participation in government is fundamentally connected with a free flow of information between government and the community. When undertaking compliance reviews, OIC looks for evidence that community engagement is two-way, that is, an agency is listening to the community about their information needs and responding by providing information to the community that the community wants. A public statement of commitment to engaging in two-way dialogue with the community about information needs is an effective means of clarifying community expectations and reinforcing a culture of openness.

Office of the Information Commissioner
Queensland

For additional information and assistance please refer to OIC's guidelines and 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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