



Applying the legislation

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

Protections and offences

The *Right to Information Act 2009 (RTI Act)*¹ contains both protections and offences for certain actions taken under the RTI Act. This Guideline explains the protections and offences relevant to decision makers and other employees of an agency and the RTI Act's accountability mechanisms.

Protections

Chapter 5, part 1 of the RTI Act² contains provisions which protect decision makers from a range of criminal and civil causes of action. They ensure that decision makers with a genuine belief that they are acting correctly are able to do their jobs under the Act without worrying they will incur liability for their actions.

What is a 'genuine belief'?

'Genuine belief' is not defined in the RTI Act, which means the words are given their ordinary meaning. For something to be a genuine belief it must be a real or authentic³ belief. The reasonableness of the belief may also be a factor when determining whether someone has acted with genuine belief.⁴ 'Reasonable in the circumstances' will likely cover situations where a public service officer genuinely believes, and has a reasonable basis for that belief, that they were acting in accordance with the RTI Act.

Protection for actions for defamation or breach of confidence

The RTI Act contains protections against actions for defamation and breach of confidence.

Defamation is the act of publishing information (verbally or in writing) about a person that insinuates or accuses them of things which would lower that person's reputation in the eyes of the public.⁵

Breach of confidence is the failure to preserve the confidential character of information which has been communicated with the understanding of confidence.⁶

¹ This Guideline refers to the RTI Act, but should be read to include the equivalent provisions in the IP Act.

² Chapter 6, part 1 of the IP Act.

³ Macquarie online dictionary

⁴ *Margarula v Rose* 1999 149 FLR 444 [6].

⁵ *Butterworths Australian Legal Dictionary* (1997).

⁶ *Butterworths Australian Legal Dictionary* (1997).



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If the RTI Act required or permitted that access be given to a document⁷, or that it be published on a disclosure log, or access or publication was done with the genuine belief that it was required or permitted:

- no action for defamation or breach of confidence can be brought against the State, an agency, or officer of the agency; and
- no action for defamation or breach of confidence in relation to any publication involved in, or resulting from the giving of access or publication, lies against the author of the document or another person having given the document to an agency.

For decision makers this means that if a decision is made under the RTI Act to give access to a document or to include it in the disclosure log in the genuine belief it was permitted under the Act, the decision maker cannot be sued for defamation or breach of confidence.

Protections for criminal offences

If the RTI Act required or permitted that access be given to a document⁸, or that it be published on a disclosure log, or access or publication was done with the genuine belief that it was required or permitted—

- neither the person authorising the access; nor
- any person concerned in the giving of the access

—commits a criminal offence because of authorising or giving access.

Both an agency's RTI decision maker and the person responsible for publishing documents on the agency's disclosure log are people who authorise access. The protection also extends to anyone else involved with giving access to documents, for example records officers and administrative staff.

Protection from personal liability

A relevant entity will not incur civil liability for an act done or omission made honestly and without negligence under the RTI Act.⁹ 'Relevant entity' includes an agency (including the principal officer), a Minister, a decision maker and a person acting under the direction of an agency, principal officer or Minister.¹⁰

This means that an agency employee who takes certain actions, or fails to take certain actions, under the RTI Act will not be liable for any civil actions, provided such actions were done honestly and without negligence. The liability will instead attach to the State.

⁷ Section 170 and 171 of the RTI Act; section 179 of the IP Act.

⁸ Section 170 and 171 of the RTI Act; section 179 of the IP Act.

⁹ Section 174 of the RTI Act; Section 183 of the IP Act

¹⁰ See section 174 of the RTI Act and section 183 of the IP Act for the full definition of "relevant entity".



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When do the protections not apply?

- The RTI Act requires an agency's policy documents to be made publically available—the protections do not apply when giving access to these policy documents.¹¹
- Agencies are required to have a publication scheme—the protections do not apply when information is made available under the publication scheme.¹²
- The protections only apply to access under the RTI Act¹³—they do not apply to the administrative release of information, for example information released under an agency policy.
- If an agency employee knowingly acts in a manner that is contrary to the requirements of the RTI Act, the protections will generally not apply.

Offences

Chapter 5, part 2 of the RTI Act¹⁴ creates a number of offences relating to actions, directions, and failures to act under the RTI Act.

Direction to act in a particular way

It is an offence to give a decision maker¹⁵ a direction¹⁶ requiring them to make a decision they believe is not the decision that should be made under the Act.¹⁷

It is also an offence to give an agency employee involved in a matter under the RTI Act a direction to act contrary to the requirements of the Act.¹⁸

These offence provisions protect all agency employees working under the RTI Act, ensuring they are able to make the decisions and take the actions they believe are correct.

¹¹ Section 169 of the RTI Act.

¹² Section 169 of the RTI Act.

¹³ Section 169 of the RTI Act.

¹⁴ Chapter 6, part 2 of the IP Act

¹⁵ A person who is authorised or required to make a decision under the RTI Act

¹⁶ Either orally or in writing.

¹⁷ Section 175(1) of the RTI Act; section 184(1) of the IP Act. While less direct forms of interference may not constitute an offence they may still invalidate the decision under administrative and common law principles of decision-making.

¹⁸ Section 175(3) of the RTI Act; section 184(3) of the IP Act. Even where the elements of a criminal offence are not made out, failing to act in accordance with the law would be in a breach of the code-of-conduct or result in other disciplinary action.



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Unlawful access

It is an offence for a person to knowingly deceive or mislead a person exercising powers under the RTI Act in order to gain access to a document containing someone else's personal information.¹⁹

False or misleading information

It is an offence for a person to give information to the Information Commissioner or a staff member of the Office of the Information Commissioner (**OIC**) that the person knows is false or misleading in a material particular.²⁰ A material particular is a matter of significance and not trivial or inconsequential.²¹

It is important to note that the offence won't apply to information contained in a *document* given to the Information Commissioner or staff member of the OIC if, when giving the document, the person:

- informs the Information Commissioner or OIC staff member, to the best of their ability, how the information is false or misleading; and
- gives the correct information to the Information Commissioner or OIC staff member if the person has, or can reasonably obtain, the correct information.

Failure to produce documents or attend proceedings

It is an offence for a person to fail to give information, produce a document, or attend before the Information Commissioner if required under the RTI Act if they do not have a reasonable excuse for their failure.²²

What is the punishment for offences?

Each offence has a maximum penalty of 100 penalty units. The value of a penalty unit is specified in the *Penalties and Sentences Regulation 2015* (Qld).

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.

¹⁹ Section 176 of the RTI Act; section 185 of the IP Act.

²⁰ Section 177 of the RTI Act; section 186 of the IP Act.

²¹ As per the definition in the *Butterworths Australian Legal Dictionary* (1997).

²² Section 178 of the RTI Act; section 187 of the IP Act.