



Interpreting the Legislation – *Right to Information Act 2009* and *Information Privacy Act 2009*

Which Act applies ?

This guideline does not reflect the current law.

It reflects the *Right to Information Act 2009* and *Information Privacy Act 2009* as they existed prior to 1 July 2025. It has been provided for the use of agencies and Ministers in relation to access and amendment applications received before 1 July 2025.

1.0 Applications under the *Information Privacy Act 2009*

1.1 Section 40

Under section 40 of the *Information Privacy Act 2009* (Qld) (**IP Act**) an individual can apply to access documents that contain their personal information. This right exists regardless of what else the documents contain.

Document means an entire document comprising one or more pages (eg a report, email plus attachments, or letter plus attachments). If the applicant's personal information is on at least one page of the document, the entire document is captured by the IP Act.

Example

An applicant applies for 'my employment file'. On the employment file is a copy of a review of their business unit's processes and practices. The employee's name appears on page twelve of the report. This makes it a document containing their personal information which can be applied for under the IP Act.

Applications for documents that do not contain the individual's personal information, or mixed applications where only some documents will contain the applicant's personal information, must be made under the *Right to Information Act 2009* (Qld) (**RTI Act**).

Applications made by someone other than an individual (for example, a company) must be made under the RTI Act.



1.2 *Determining if an application can be decided under the IP Act*

The starting point for deciding which Act to process an application under is the box the applicant ticked on the form. If they have applied under the IP Act, decision makers must proceed on that basis.

Decision makers will need to consider the scope of the application to decide whether it is limited to documents containing the applicant's personal information. For example, an application for 'my medical records', 'my employment file', or 'all documents about my complaint' would generally be IP Act applications, as in most cases those documents will contain the applicant's personal information.

If the applicant has applied under the IP Act and some documents in scope will not contain their personal information, decision makers can:

- contact them informally to discuss options, such as limiting their scope only to documents that do contain their personal information; or
- follow the formal process in section 54 of the IP Act, which requires the applicant to alter the scope or move the application to the RTI Act. See [Applications made under the Wrong Act](#) for more information.

1.3 *Dealing with IP Act applications*

The test for whether a document can be applied for under the IP Act is whether it contains the applicant's personal information. This does not mean decision makers are only required to process and make decisions on the applicant's personal information. All information relevant to the application's scope must be processed.

Information cannot be removed as irrelevant under section 88 of the IP Act on the grounds that it is not the applicant's personal information. For more information on when information can be removed as irrelevant, please see [Deleting Irrelevant Information](#).

The decision maker must consider all relevant information, both the applicant's personal information and other information, eg third party personal information and information about agency decisions or actions, and make an appropriate access decision.

2.0 *Mutual Personal Information*

Personal information of an applicant includes mutual personal information. Mutual personal information is information that is the personal information of more than one individual. The fact that information is the personal information of one individual will not stop it from also being the personal information of another individual.



For example:

- the fact that Nurse Bob treated Applicant Joe is Joe's personal information as well as Nurse Bob's personal information
- the complaint made by Fred about Applicant Charlie is Charlie's personal information as well as Complainant Fred's personal information
- a professional opinion given by Doctor Leo about Applicant Meg is Meg's personal information as well as Doctor Leo's personal information
- that Inspector Gary is investigating Applicant Barney is Applicant Barney's personal information as well as Inspector Gary's personal information.

3.0 **Application made under the RTI Act that *could* have been made under the IP Act**

If an individual makes an application under the RTI Act which could have been made under the IP Act, ie it is only for documents that will contain the applicant's personal information, the process outlined in section 34 of the RTI Act must be followed. This process gives the applicant an opportunity to move the application to the IP Act.

For more information see [Applications Made Under the Wrong Act](#).

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

Published 16 July 2010 and Last Updated 9 February 2021

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

This guideline does not reflect the current law.

It reflects the *Right to Information Act 2009* and *Information Privacy Act 2009* as they existed prior to 1 July 2025. It has been provided for the use of agencies and Ministers in relation to access and amendment applications received before 1 July 2025.