



## Applying the legislation

GUIDELINE *Information Privacy Act 2009*

### When do the privacy principles not apply: documents and entities

In some circumstances the [Information Privacy Act 2009 \(Qld\)](#) (**IP Act**) recognises that it is appropriate for agencies **not** to comply with the privacy principles. It creates a number of exceptions to, and exemptions from, the obligation to comply with the privacy principles.

#### Provision of personal information to Ministers

Part of Queensland's Westminster model of responsible government is that Ministers are individually responsible and accountable to Parliament for their own actions, and for the administration of their respective government departments.

In order for a Minister to be fully aware of, and to make decisions about the functions and activities of their departments, Ministers need to have access to necessary information. Section 38 of the IP Act ensures that the provision of this information will not constitute a breach of the privacy principles where it contains personal information.

The information must be required to:

- inform the Minister
- about matters relevant to the Minister's responsibilities
- in relation to the agency providing the information to the Minister.

The key requirement under section 38 of the IP Act is that the information must be required to inform Ministers about portfolio responsibilities to their agencies and not to any other person or body. An agency should satisfy itself that there is a link between the personal information and the matters that are relevant to the Minister's responsibility to the agency.

#### Documents to which the privacy principles do not apply

Schedule 1 of the IP Act sets out the documents to which the privacy principles do not apply. It does not matter which agency holds the documents. Agencies should be aware that these documents may be subject to secrecy or confidentiality obligations set out in other legislation. These documents are:

##### ***Covert activity***

A document to the extent it contains personal information:



- arising out of or in connection with a controlled operation or controlled activity under the *Police Powers and Responsibilities Act 2000* (Qld) or the *Crime and Misconduct Act 2001* (Qld)
- arising out of or in connection with the covert undertaking of an operation, investigation or function of a law enforcement agency
- obtained under a warrant issued under the *Telecommunications (Interception and Access) Act 1979* (Cth).

***Witness protection***

A document to the extent it contains personal information about a person who is included in a witness protection program under the *Witness Protection Act 2000* (Qld) or who is subject to other witness protection arrangements made under an Act.

***Disciplinary actions and misconduct***

A document to the extent it contains personal information arising out of:

- a complaint under the *Police Service Administration Act 1990* (Qld), part 7
- a complaint, or an investigation of misconduct, under the *Crime and Misconduct Act 2001* (Qld).

***Public interest disclosures***

A document to the extent it contains personal information:

- contained in a public interest disclosure under the *Public Interest Disclosure Act 2010* (Qld)
- that has been collected in an investigation arising out of a public interest disclosure under the *Public Interest Disclosure Act 2010* (Qld)

***Cabinet and Executive Council***

A document to the extent it contains personal information that is also the subject of the *Right to Information Act 2009* (Qld), schedule 3, section 1, 2 or 3.

***Commissions of inquiry***

A document to the extent it contains personal information arising out of a commission of inquiry.

***Generally available publications, archives and posted articles***

A document that is:

- a generally available publication
- kept in a library, art gallery or museum for the purposes of reference, study or exhibition



- a public record under the *Public Records Act 2002* (Qld) in the custody of Queensland State Archives that is not in a restricted access period under that Act
- a letter, or anything else, while it is being transmitted by post.

### **Entities to which the privacy principles do not apply**

Schedule 2, part 1 of the IP Act sets out the entities to which the privacy principles do not apply:

- the Parliamentary Judges Commission of Inquiry appointed under the expired *Parliamentary (Judges) Commission of Inquiry Act 1988*
- a commission of inquiry issued by the Governor in Council whether before or after the commencement of this schedule
- a parents and citizens association under the *Education (General Provisions) Act 2006* (Qld)
- the Legislative Assembly
- a member of the Legislative Assembly
- a committee of the Legislative Assembly
- a member of the committee of the Legislative Assembly
- a parliamentary commission of inquiry
- a member of a parliamentary commission of inquiry
- a grammar school to which the *Grammar Schools Act 2016* (Qld) applies
- a government owned corporation.

### **Entities to which the privacy principles do not apply in relation to a particular function**

Schedule 2, part 2 of the IP Act sets out the entities which are generally subject to the privacy principles but are exempt when performing certain functions. The entities and functions are:

- a court, or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions
- a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial function
- a tribunal in relation to the tribunal's judicial or quasi-judicial functions.

Functions that are not listed in this section must comply with the privacy principles.



**Office of the Information Commissioner**  
Queensland

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For additional information and assistance please refer to the OIC's privacy guidelines, or contact the Enquiries Service on 07 3234 7373 or email [enquiries@oic.qld.gov.au](mailto: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](mailto:feedback@oic.qld.gov.au).

*Published 30 June 2009 and Last Updated 16 April 2018*

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