



Applying the legislation

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

Refusal to deal—all documents exempt

Under the *Right to Information Act 2009 (RTI Act)*¹ people have the right to be given access to documents subject to limitations set out in the RTI Act. These limitations include situations where an agency can refuse to deal with an application.

If every document applied for, or every document in a category of documents applied for², would be exempt from release under one of the provisions in schedule 3 an agency³ can refuse to deal with the application under section 40 of the RTI Act.⁴

Pro-disclosure bias

You are required to have a pro-disclosure bias when making this decision and can decide to process an application even if you would technically be permitted to refuse to deal with it.

Does section 40 apply?

There are two factors that determine whether you can refuse to deal under section 40: the scope of the application and the extent to which the documents will comprise exempt information.⁵

Note

You do not need to locate or identify documents before deciding to refuse to deal under section 40. It should be apparent from the terms of the application that the class of documents or type of information applied for would be entirely exempt.

First requirement: What is the scope of the application?

Section 40 applies where the application, or part of the application, relates to all documents containing:

- a) information of a stated kind; or

¹ Section 59 of the *Information Privacy Act 2009* (IP Act) is the same as section 40 of the RTI Act. References in this guideline to section 40 of the RTI Act also refer to section 59 of the IP Act.

² For example if an applicant applies for a list of different kinds of documents and an entry on the list would satisfy section 40, an agency can refuse to deal with that part of the application.

³ In this guideline *agency* includes a Minister unless otherwise noted.

⁴ For key published decisions, please refer to the OIC [annotated legislation](#).

⁵ For examples of section 40 being applied see [Cannon and Department of Police \(Unreported, Queensland Information Commissioner, 20 December 2011\)](#) and [Together Queensland and Department of Transport and Main Roads \(Unreported, Queensland Information Commissioner, 1 February 2013\)](#).



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- b) relating to a stated subject matter.

It can also apply where the applicant seeks access to documents:

- c) of a stated class of a stated kind; or
- d) of a stated class relating to a stated subject matter.

Examples

- a) Information of a stated kind: *all legal advice received by the agency about closing Rose Rd.*
- b) Relating to a stated subject matter: *all documents containing information about the IT contract with Tamed Lightning Pty Ltd.*
- c) Stated class of a stated kind: *all briefing notes to the Minister.*
- d) Stated class relating to a stated subject matter: *all briefing notes to the Minister about the Tamed Lightning contract.*

The deciding factor in applying section 40 will be the words used by the applicant in describing the subject matter of the documents sought. Deciding whether the scope of the application meets the first requirement of section 40 does not involve examining the documents or identifying exempt information provisions and working backwards.⁶ The starting point is *always* what the applicant has written.

If the first consideration is satisfied you then need to decide if the documents would be entirely comprised of exempt information.

Second requirement: Would all documents comprise exempt information?

In order for section 40 to apply, the contents of the documents applied for must be exempt from release under schedule 3. If the contents would be a combination of exempt information and contrary to the public interest information you cannot refuse to deal under section 40.

Examples

In the earlier examples, applications for 'legal advice about the decision to close Rose Rd' and 'all documents containing information about the transport contract with Tamed Lightning Pty Ltd' satisfy the **first** requirement of section 40.

Only the first application—for legal advice about the road closure—satisfies the **second** requirement that all documents would be entirely comprised of exempt information, as legally privileged information is exempt from release⁷.

⁶ See *Knight v Corrections Victoria* [2010] VSC 338 which discussed a similar provision (section 25A(5)) in the Victorian *Freedom of Information Act 1982*.

⁷ Under schedule 3, section 7



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While it is common for applications dealt with under section 40 to involve only one exempt information provision it is not a requirement. For the purposes of section 40, information in the documents can be exempt under multiple provisions of schedule 3.⁸

Do you need to search for the documents?

Identifying and searching for the documents will generally not be required for exempt information provisions that contain no exceptions.

However, where the exemption provision does contain an exception, the agency will generally need to review the information. For example, schedule 3, section 10 lists situations in which information that otherwise falls within the exemption provision will not be exempt. In most circumstances, the agency cannot be satisfied that the information is exempt until they have determined that the exceptions do not apply.⁹

Notice of decision requirements

If you refuse to deal under section 40, you must set out in the prescribed written notice:

- the specific exempt information provision or provisions which apply; and
- the reasons for the decision for classifying the information as exempt information.¹⁰

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

⁸ *Knight v Corrections Victoria* [2010] VSC 338 which discussed a similar provision (section 25A(5)) in the Victorian *Freedom of Information Act 1982*.

⁹ *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96, paragraph 48.

¹⁰ See section 54(2)(f) of the RTI Act. A notice of decision must comply with section 54 and section 191 of the RTI Act. See the *Statement of Reasons* Guideline for further information.



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