



Applying the legislation

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

Documents of a former Minister

Under the *Right to Information Act 2009* (RTI Act)¹, applications for access to documents may be made to agencies and Ministers. Access applications to Ministers can only be made for *documents of a Minister*². A document of a Minister is a document relating to an agency's affairs that is in the Minister's (or their staff or consultant's) physical possession, legal control, or is one the Minister is entitled to access.

Documents of former Ministers

When a Minister ceases being a Minister their documents are no longer documents of a Minister. The Queensland Ministerial Handbook³ sets out what is to be done with Ministerial documents depending on the circumstances.

Where the Minister ceases to hold their portfolio without a change of government, ministerial documents may be transferred to State Archives or given to the Minister who takes over their portfolio responsibilities. Official records that relate to the Minister personally (for example, their official diary) should be transferred to State Archives.

Where there has been a change of government, Cabinet records must be returned to the Cabinet Secretariat, agency records must be returned to the agency, and Ministerial documents should be transferred to Queensland State Archives⁴.

Note

Because Ministers hold personal commissions from the Governor, a change of Minister will impact on-foot access applications. When those personal commissions cease so do any current applications to that Minister and directions from authorising decision-making will no longer be valid.

Applying for documents of former Ministers

Documents of former ministers lodged with State Archives become documents of an agency and documents of former Ministers passed to an incoming Minister remain documents of a Minister. Both of these can be applied for under the RTI Act.

¹ References to the RTI Act in this guideline include references to Chapter 3 of the *Information Privacy Act 2009*.

² Section 13 of the RTI Act.

³ Chapter 2.3: <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook/information/records.aspx>

⁴ State Archives is part of the [Department of Science, Information, Technology and Innovation](#).



Office of the Information Commissioner
Queensland

Access and consultation

Access to documents of former Ministers will only be refused if they are exempt under schedule 3 of the RTI Act, contrary to the public interest to release under schedule 4, or fall within one of the categories of information to which access may be refused under the RTI Act.

Consultation will be required if a decision is made to release information that is reasonably likely to be of concern to a third party. The need for consultation will need to be decided on a case by case basis, but possible third parties could include the former Minister, the current Minister of the former Minister's portfolio or the portfolio agency, or the leader of the former Minister's political party, depending on the nature of the documents.

Note

The Queensland Parliamentary Services may be of assistance with consulting former Ministers.⁵

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.

Published 15 November 2017 and Last Updated 15 November 2017

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

⁵ See the Queensland Parliamentary Services website for more information about how to contact a former Minister and how to search for a former Minister at www.parliament.qld.gov.au/members/former/contacting-former-members.