



## Information Sheet

INFORMATION SHEET - *Right to Information Act 2009* and *Information Privacy Act 2009*

### Explaining your review rights

If you have received a reviewable decision under the *Right to Information Act 2009* (Qld) (**RTI Act**) or the *Information Privacy Act 2009* (Qld) (**IP Act**) that you are not satisfied with, you have the right to seek a review.

You also have the right to seek a review if you have been consulted as third party under either of those Acts and documents are going to be released over your objections.

#### What is a reviewable decision?

A *reviewable decision* is a specific kind of decision. They are listed in the RTI and IP Act and include a decision:

- that your application does not comply with all the requirements of the Act
- to refuse to information contained in a document; and
- to release documents over the objections of a consulted third party.

#### Deemed decisions

You can also seek a review of a *deemed decision*. A deemed decision happens if an agency fails to make any decision on your application or does not make a decision in the time allowed by the Act. In those circumstances, the Act deems the agency to have made a decision refusing you access to the documents.

#### When can I apply for review?

You cannot apply for a review until you have actually received the decision from the agency. It will usually be contained in a letter or formal notice sent to you from the agency you applied to.<sup>1</sup>

In the case of a deemed decision, you can apply for a review when you become aware that the decision is overdue. Note that an application for review of a deemed decision can only be made to the Office of the Information Commissioner (**OIC**).

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<sup>1</sup> This is called a notice of decision or a 'prescribed written notice'.



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### Limits of a review

A review will only deal with the documents covered by your initial application. You cannot ask for more documents, or for different documents, as part of a review.

### Internal Review or External Review?

Apart from deemed decisions, which can only be dealt with by the Information Commissioner, you have two choices for review: internal review and external review.

If you choose an internal review and are not satisfied with the result, you will be able to have an external review of the internal review decision. However, if you choose external review first, you will not be able to have an internal review of the external review decision.

### Internal review

An internal review will be conducted by a different officer of the agency who is at least as senior as the original decision maker. The internal review officer is required to consider your application and relevant documents and make a new decision as if the reviewable decision had not been made.

There is no fee for internal review applications.

### How do I apply for an internal review?

An application for internal review must:

- be in writing
- provide an address where correspondence can be sent (this can be an email or a postal address)
- be made **within 20 business days** from the date stated on the decision notice, not from when you receive the notice (unless the agency allows further time); and
- be lodged at the office of the agency. If you are unsure where to submit your internal review application, contact the relevant agency that made the decision.

### How long does an internal review take?

An agency has 20 business days to give an applicant written notice of the internal review decision.



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If the internal review decision maker does not give you a decision in time, they will be taken to have upheld the original decision and you can apply to the OIC for an external review.

### **What are the advantages of an internal review?**

There can be advantages to having the decision internally reviewed by the agency before, or instead of, proceeding to external review.

Seeking an internal review will mean you have two opportunities for review, as you can seek an external review if the internal review does not resolve your concerns, and internal review's 20 business days will generally be shorter than an external review.

As part of your internal review, you can submit new arguments and evidence for consideration by the agency which may assist them to further consider other relevant public interest factors in determining what information can be released.

### **External review**

You can apply to have a reviewable decision externally reviewed by the Information Commissioner if you:

- have received a healthcare decision
- have had a deemed decision on your application
- are not satisfied with the first reviewable decision made by an agency; or
- applied for internal review and are not satisfied with that decision.

An external review reconsiders all aspects of the reviewable decision, including questions of law and questions of fact, and during the review you will have a chance to make submissions.

### **How do I apply for an external review?**

Applications for external review must be made **within 20 business days** from the date on your decision notice.

To apply for an external review you need to apply in writing, including:

- your name
- address and contact details
- details of the decision for review, including the date of the decision and the name of the agency you applied to.



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Your application can be lodged using the [external review application form](#)<sup>2</sup> available on the OIC website or:

- by post: PO Box 10143, Adelaide Street, Brisbane, Qld, 4000
- by email: [administration@oic.qld.gov.au](mailto:administration@oic.qld.gov.au)
- in person: Level 7, 133 Mary St, Brisbane

There is no fee for making an external review application.

The following information is not required as part of your application, but it may assist with the early assessment and processing of your application:

- reasons why you want an external review
- copies of your decision notice or notices
- any other documents or information which supports your application.

### **How long does an external review take?**

The time taken by the OIC to complete an external review varies depending on the particular circumstances of each application. The OIC's Early Assessment and Resolution team aims to resolve external reviews as quickly as possible, but where the external review involves complex issues or large numbers of documents it may take significantly longer.

The OIC will work with all participants of an external review to encourage settlement of an external review without the need to issue a formal decision.

Where an external review cannot be informally resolved, the OIC will proceed to make a formal decision on the matter<sup>3</sup>. External reviews requiring a formal decision will generally require approximately one year to finalise.

The Information Commissioner uses a range of strategies to ensure external reviews are handled in a timely way and may involve one, some or all of the following five stages:

1. Preliminary inquiries
2. Early assessment and resolution
3. Informal resolution
4. Preliminary view
5. Decision

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<sup>2</sup> <https://www.oic.qld.gov.au/about/right-to-information/apply-for-external-review-of-an-access-or-amendment-decision>

<sup>3</sup> based on the circumstances as they exist at the time of the review - see *Palmer and Townsville City Council* [2019] QICmr 43 (3 October 2019) at paragraph 21



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**Do I have any review rights after an external review?**

There is a limited right of appeal from a decision of the Office of the Information Commissioner (**OIC**) to the Queensland Civil and Administrative Tribunal (**QCAT**).

An appeal to QCAT can only be made on a question of law after OIC makes a formal decision which is adverse to you. There is no right of appeal if you simply disagree with the outcome of the external review, and there is no right of appeal if OIC informally resolves an external review. An appeal to QCAT must be made within 20 business days from the date of the decision.

For information about filing an appeal with QCAT go to [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au). The LawRight<sup>4</sup> Self Representation Service may be able to provide assistance with QCAT matters relating to RTI. They can be contacted on 3846 6317.

For additional information, please see the OIC's Information Sheets on the OIC website or you contact the Enquiries Service on 07 3234 7373 or [enquiries@oic.qld.gov.au](mailto:enquiries@oic.qld.gov.au).

**This information sheet 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).

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

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<sup>4</sup> For more information see [www.lawright.org.au/cms/page.asp?ID=61114](http://www.lawright.org.au/cms/page.asp?ID=61114).