



## Applying the Legislation

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

### Exempt Information - Overview

If a request for information is made to an agency,<sup>1</sup> the agency or Minister must decide to give access to the information unless giving access would, on balance, be contrary to the public interest.<sup>2</sup>

In the *Right to Information Act 2009* (Qld) (**RTI Act**) and *Information Privacy Act 2009* (Qld) (**IP Act**) this approach to disclosure is described as the **pro-disclosure bias**.<sup>3</sup>

Despite the pro-disclosure bias, Parliament recognises that disclosure of some types of information would, on balance, be contrary to the public interest.<sup>4</sup> These particular types of information are known as **exempt information**.<sup>5</sup>

#### Exempt information

An agency may refuse access to all or part of a document under section 47(3)(a) and section 48 of the RTI Act, to the extent the document comprises exempt information.<sup>6</sup>

The RTI Act is not, however, intended to prevent or discourage the giving of access to documents containing exempt information.<sup>7</sup>

It remains open to an agency to decide to give access under the RTI Act to documents containing exempt information<sup>8</sup> where the agency considers it appropriate. This discretion does not extend to the Information Commissioner upon external review.<sup>9</sup>

An agency must give access to a copy of a document from which exempt information has been deleted where it is practicable to do so.<sup>10</sup>

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<sup>1</sup> In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

<sup>2</sup> See section 48(1) of the RTI Act.

<sup>3</sup> See section 44 of the RTI Act and section 64 of the IP Act.

<sup>4</sup> See section 48(2) of the RTI Act.

<sup>5</sup> See section 48(4) and Schedule 3 of the RTI Act.

<sup>6</sup> Section 67(1) of the IP Act provides that grounds for refusal apply in the same way and to the same extent as under the RTI Act.

<sup>7</sup> See section 4(2) of the RTI Act.

<sup>8</sup> See section 48(3) of the RTI Act.

<sup>9</sup> Section 105(2) of the RTI Act; confirmed in *Mary Valley Heritage Railway Museum Association Inc and Department of Transport and Main Roads and 8S1UCF* (Unreported, Queensland Information Commissioner, 3 September 2012).

<sup>10</sup> Note that the provisions are worded differently in the RTI and IP Acts. The RTI Act includes that the agency must give access and that section is subject to section 55.



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### **What sort of information is exempt?**

Schedule 3 of the RTI Act sets out the following categories of exempt information:

- Cabinet matter brought into existence before commencement.
- Cabinet information brought into existence on or after commencement.
- Executive Council information.
- Information briefing incoming Minister.
- Brisbane City Council Establishment and Coordination Committee information.
- Budgetary information for local governments.
- Information revealing particular Sovereign communications.
- Information disclosure of which would be contempt of court or Parliament.
- Information subject to legal professional privilege.
- Information disclosure of which would found action for breach of confidence.
- National or State security information.
- Law enforcement or public safety information.
- Investment incentive scheme information.
- Information disclosure of which prohibited by Act.

The 14 sections in schedule 3 of the RTI Act set out the requirements for establishing that information is exempt. The tests and considerations that are relevant to the application of the sections are specific to each exempt information provision.

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](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).

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