



Office of the Information Commissioner  
Queensland

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## Information Sheet

GUIDELINE - *Right to Information Act 2009*

### Applying for information about government tenders

This Information Sheet is intended to assist applicants and consulted third parties to understand how the right of access in the *Right to Information Act 2009* (Qld) (**RTI Act**) applies to documents relating to government tender processes.

#### Can I apply for the documents?

The RTI Act gives people the right to apply to Queensland government agencies for access to documents. However, access to those documents may be refused if information in the documents is exempt or contrary to the public interest to release.

#### What tender information is publicly available?

##### Queensland Government Tenders

The Queensland government tender process has specific requirements that must be satisfied to ensure good value, a fair price, and a justifiable expenditure of public funds.

As part of the [Queensland Procurement Policy](#)<sup>1</sup> and [Contract Disclosure Guidelines](#)<sup>2</sup>, agencies must publish details about successful tenderers for projects over \$10,000<sup>3</sup>. The information that must be published includes:

- the name and address of the procuring agency
- a description of the goods or services procured
- the date of award or contract date
- the value of the contract or standing offer arrangement
- the name and address of the successful supplier
- the procurement method used.<sup>4</sup>

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<sup>1</sup> Clause 3.3 of the Queensland Procurement Policy available online at <http://www.hpw.qld.gov.au/SiteCollectionDocuments/QLDProcurementPolicy.pdf>

<sup>2</sup> Contract Disclosure Guidelines available at: <http://www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideContractDisclosure.pdf>

<sup>3</sup> For contracts over \$10 million the published information must also include additional details as set out section in 5.1 Contract disclosure requirements within the Contract Disclosure Guidelines

<sup>4</sup> For more information and details about upcoming, current or closed tenders, please visit the Procurement Transformation Office <https://www.business.qld.gov.au/running-business/marketing-sales/tendering/capability/search-government-tenders> and conduct a search for the relevant tender.



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### Local Government Tenders

For contracts worth \$200,000 or more, local governments must publish on their website and display in a conspicuous place in its public office:

- who the contract is with
- the value of the contract; and
- the purpose of the contract, eg the particular goods or services to be supplied.<sup>5</sup>

This information must remain available for twelve months.<sup>6</sup>

#### Note

You do not need to apply under the RTI Act to access publicly available information. However, if there are documents relating to a tender process which are not already available you will, in most circumstances, have to make an RTI application to access them.

### Will I get access to the documents?

You will get access to some, but are not likely to be given access to all, documents relating to government tender processes, as some documents will be exempt or contrary to the public interest to release under the RTI Act<sup>7</sup>.

The Information Commissioner has previously considered various types of tender documents and whether they will be released under the RTI Act. These are set out below, however they are not exhaustive and disclosure will depend on the circumstances.

### Documents generally available for disclosure

The RTI Act requires that access be given to documents unless it is contrary to the public interest to do so. Generally, the public interest will favour disclosure of information about:

- the standards of service and performance indicators in the contract
- the accountability of the agency regarding the conduct of the tender process and the decisions made in relation to awarding the tender
- the type of services to be delivered by a contracted service provider
- the total price tendered by the successful tenderer
- other information that promotes accountability and transparency, such as:
  - any price payable by the public
  - details of significant guarantees and undertakings by the chosen service provider as to service quality

<sup>5</sup> Local Government Regulation 2012 section 237(1)

<sup>6</sup> Local Government Regulation 2012 section 237(2)

<sup>7</sup> See [What is Exempt Information](#) and [What is the Public Interest](#) for more information.



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- details of any transfer of assets between the government and the service provider
- the results of any cost benefit analyses.

### Documents not generally available for disclosure

Generally, disclosure of the following types of information will be contrary to the public interest and it will usually not be provided to an applicant under the RTI Act:

- The name of unsuccessful tenderers.
- Information that would prejudice business affairs, for example, commercially sensitive information that relates to the affairs of a business.
- Trade secrets: considerations in making this decision include how easy it would be for people to find out the trade secret information, measures taken to safeguard the information, and how difficult it would be to acquire or duplicate the trade secret information.
- Confidential information: it is not enough for a document to simply be marked confidential; it must have the necessary elements of confidence<sup>8</sup>.
- Personal information of individuals other than the applicant.

#### Example

In 2013, an applicant seeks access to a wholesale price list containing wholesale prices of laser fly zappers, which was given to the Department of Green in 2012 as part of its tendering process.

The Department of Green consults with the supplier of the laser fly zapper who objects to the disclosure of the wholesale price list because the information is commercially sensitive due to the novelty of the product and the small industry.

The Department of Green considers the supplier's views, balances factors favouring disclosure and factors favouring nondisclosure and decides not to provide access to the wholesale price list, despite the information being out of date.

The government agency considered that disclosing the information would diminish the competitiveness of the supplier due to the novelty of the product and small industry. It also considered that disclosure would deter future supply of information and subsequently affect future tendering processes.

### Consultation with third parties

If an agency decides to release a tender document, and a third party would be concerned about its release, the agency has to consult with the third party. If the third party objects, the agency will consider it when making their final decision. If the agency decides to release documents over a third party's objection access to the document will be deferred to allow the third party to seek a review.

<sup>8</sup> See [What is confidentiality? An introduction for applicants and third parties](#) for more information.



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For additional information and assistance please refer to OIC Guideline [RTI and tendering for government contracts](#)<sup>9</sup> or contact the Enquiries Service on 07 3234 7373 or email [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 [enquiries@oic.qld.gov.au](mailto:enquiries@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>9</sup> See OIC Guideline – *RTI and tendering for government contracts* at <http://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/decision-making/rti-and-tendering-for-government-contracts>.