



## Applying the legislation

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

### How to calculate timeframes

The *Right to Information Act 2009*<sup>1</sup> (**RTI Act**) creates a right of access to documents in the possession or control of Queensland government agencies, subject to certain exclusions and exceptions.<sup>2</sup> The RTI Act specifies the time periods within which actions must be taken when processing a formal application, including the time by which a decision on the application must be given to the applicant.

This guideline explains how to calculate the time periods under the RTI Act.<sup>3</sup>

#### Counting business days

Timeframes in the RTI Act are calculated in business days.<sup>4</sup> A business day is a day which is not a weekend or a holiday<sup>5</sup> in the place where the agency is making their RTI decision.<sup>6</sup> This may differ between agencies: for example, depending on where they are located, different RTI Units will have the public holiday for their show day will on different days.

If the RTI Unit is shut down on a day which is **not** a weekend or holiday, the day will be counted as a business day. This includes unplanned closures, for example because of extreme weather events, and planned closures such as any Christmas/New Year shut down.

#### When does a business day end?

A business day includes the entire day, beginning at 12:00am and ending at 11:59pm; it does not end when the agency's office closes for the day. For example, a decision notice could be emailed to an applicant at 11:58pm on the due date if it was certain to arrive by 11:59pm.

#### When to start counting?

The timeframes in which an agency must do something under the RTI Act are triggered by a specific event<sup>7</sup>, for example the processing period is triggered by the arrival of a valid application.

With one exception (see below), when calculating timeframes the day on which the event occurs (referred to here as Day Zero) does not count. This also applies when the event occurs on a day that is not a business day. For example, if the

<sup>1</sup> And chapter 3 of the *Information Privacy Act 2009 (IP Act)*.

<sup>2</sup> References to agencies include a Minister.

<sup>3</sup> And the IP Act.

<sup>4</sup> With the exception of section 54(5)(b) of the IP Act, which refers only to days rather than business days. For calendar days weekdays, weekends and public holidays are counted.

<sup>5</sup> Declared under the *Holidays Act 1983*: a special, bank or public holiday.

<sup>6</sup> Schedule 1 of the *Acts Interpretation Act 1954*.

<sup>7</sup> With the exception of the 10 additional business days provided if an agency needs to consult with a third party. Refer to Consulting with a Third Party for more information on dealing with the third party consultation period.



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agency receives a valid RTI application on a weekend or public holiday this will be Day Zero; the next business day will be Day One of the processing period.

**Note**

The processing period begins to run as soon as a valid application arrives in **the agency**, not the day it arrives in the RTI Unit. It is important that RTI applications are sent to the RTI Unit as quickly as possible.

**Calculating timeframes for Charges Estimate Notices**

When working out when the revision period begins after issuing a Charges Estimate Notice (CEN) under the RTI Act there is no Day Zero. When a CEN is issued, the processing period immediately stops, and the revision period immediately begin.<sup>8</sup>

**When do timeframes end?**

If the last day of a timeframe is not a business day, the time frame ends on the next business day. For example, if day 24 of the processing period was on Friday, and the following Monday was a public holiday, the decision notice would be due on Tuesday, because that is the next business day.

**When is notice taken to be given?**

An applicant must be given a notice of decision by the end of the processing period. Even if the decision is made before the end of the processing period, if it is not given to the applicant before the processing period ends the decision will become a deemed refusal of access to all documents.<sup>9</sup>

For this reason, it is helpful to deliver the notice of decision by email or fax, if the applicant is happy to receive them that way. If this is not possible, the decision notices will have to be delivered by post, taking into account Australia Post's timeframes for ordinary delivery.<sup>10</sup>

**Note**

Where an Act allows a document to be served by post, service is carried out by properly addressing, prepaying and posting the document as a letter.<sup>11</sup> Notice is taken to be 'given' at the time in which the letter would be delivered in the ordinary course of business, unless the contrary is proved.

**Extra time to make a decision**

The agency can ask the applicant for extra time to make a decision at any time before the end of the processing period. This extra time is called the *further specified period*. This time should be requested in business days. The applicant

<sup>8</sup> *Stanway v Information Commissioner & Anor* (2019) QCATA 33

<sup>9</sup> Section 46 of the RTI Act.

<sup>10</sup> Regular mail delivery timeframes are available from the Australia Post website at [www.auspost.com.au](http://www.auspost.com.au).

<sup>11</sup> Section 39A of the *Acts Interpretation Act 1954*.



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does not have to agree to the request; as long as they do not refuse and do not seek an external review<sup>12</sup>, the agency can keep working on the application.

**Example**

Jane is processing Bob's access application. On the last day of the processing period she sends an email to Bob asking for an extension of 10 business days and continues considering the application. Five business days after the date of Jane's email Bob sends an email declining the extension request. Jane has not yet made a decision on this day. Jane will have to refund Bob's application fee and send him a notice of deemed decision as she has not been able to make a considered decision to replace the deemed decision.

The applicant's agreement is not necessary to rely on the extra time requested. However, even if the applicant does agree, they can revoke it or seek an external review at any time during the additional time.

**Extra time is not processing period**

The further specified period is not part of the processing period. It begins when the processing period ends.<sup>13</sup> The agency can request as many extensions as required to process the application but each additional extension must be requested before the prior extension period ends.

**Clock doesn't stop**

Because the further specified period is *not* part of the processing period, trigger events that normally stop the clock during the processing period do not do so. For example, if an agency issues a Notice of Intention to Refuse to Deal during the further specified period, the further specified period keeps running. The agency will need to ask the applicant for any extra time it needs to process the application.

**Specific timeframes**

For information on dealing with specific timeframes under the RTI Act, please see these guidelines:

- [Schedule of relevant documents and charges estimate notice](#)
- [Consulting with a relevant third party](#)
- [Refusal to deal – diversion of resources](#)
- [Applications made under the wrong Act](#)

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).

<sup>12</sup> See section 35(3)(c) of the RTI Act, which allows an agency to continue working on the application unless they receive notice that the applicant has applied for a review.

<sup>13</sup> Section 18(2)(b) of the RTI Act, definition of processing period.



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**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.**

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