



Applying the legislation

GUIDELINE *Right to Information Act 2009*

Giving access to documents

This guideline explains how to give an applicant access to documents an agency has decided to release to them under the *Right to Information Act 2009*¹ (Qld) (**RTI Act**). Under the RTI Act, access to documents must be given in the way the applicant requests², unless it would:

- interfere unreasonably with the operations of the agency³
- be detrimental to the document or, due to its physical nature, be inappropriate; or
- involve copyright infringement of someone other than the State.⁴

The RTI Act includes a non-exhaustive list⁵ of ways access can be given, including:

- inspection
- copies
- viewing or hearing images or sounds
- transcriptions of sound recordings, shorthand writing or code; and
- creating a written document out of electronic information, such as a database.

The applicant and agency can agree to access being given in one of these forms, or can agree on another, more suitable, form.

Deleting irrelevant, exempt and contrary to the public interest information

Where an agency decides to refuse access to irrelevant⁶, exempt, or contrary to the public interest information, it must be deleted from a copy of the document before the applicant access the document.

Note

Never remove information from original documents. Copies must always be made of the original documents and the information removed from the copies.

¹ And Chapter 3 of the *Information Privacy Act 2009* (IP Act).

² Section 68 of the RTI Act

³ or functions of the Minister

⁴ If a document is more than 25 years old or in the custody of the Queensland State Archives, the State Archivist may also direct that access not be given in 1 or more, but not all, of the forms mentioned in subsection (1) if, in the State Archivist's opinion, giving access in that form would be detrimental to the document's preservation or, having regard to the physical nature of the document, would be inappropriate, section 68(8).

⁵ Section 68(1).

⁶ Except where the information is 'irrelevant information' then access needs only be given to the copy with that information removed if the agency considers it is reasonably practicable to do so – section 73(3) of the RTI Act.



Creating written documents and transcripts

Note

These documents are not post-application documents because their creation is specifically authorised by the RTI Act.

Creating written documents from electronic information

Where information only exists electronically, such as in a database, an agency can create a written document from the electronic information in order to give access to it.⁷ The agency can only use tools which are generally available to it to create the written document.

Generally, the agency should only create a written document out of the information which is in scope of the application. Methods of creating the written document will depend on the tools available to the agency but could include exporting to Excel or taking a screen capture.

Transcribing sounds, shorthand, or code

Where an agency has documents that are written in shorthand, code, or consist of words that can be reproduced as sounds, section 68(1)(d) allows an agency to produce a written transcript of the words, code, or sounds in order to give access to them.

Access to copies

Applicants can access electronic copies (eg email, CD, USB, downloadable from a weblink) or hardcopies. Hardcopies will usually be in the form of A4 photocopies, but could also be, for example, large scale maps, building plans, or x-rays.

Access by inspection

Applicants can choose access by inspection or inspection may be the only form of access available, for example, where the document is subject to third party copyright. Documents must be redacted to remove exempt, irrelevant, or contrary to the public interest information before the applicant views them.

An applicant must be given a 'reasonable opportunity' to inspect the documents. What is reasonable will depend on the circumstances. An agency should consider the applicant's access to transport and any difficulties involved in travelling to the agency. It may be appropriate to send the documents to a branch of the agency closer to the applicant to facilitate inspection.

A 'reasonable opportunity' may also mean allowing the applicant to inspect the documents over several days, particularly if there are large in number.

Depending on the contents of the documents, agencies may wish to consider supervising applicants during inspection.

⁷ Section 68(1)(e) of the RTI Act



Viewing images and hearing sounds

If a document is an audio or video document⁸, such as an audio or video file, the agency can arrange for the applicant to hear or view it, with any exempt or contrary to the public interest information removed.

If the agency does not have the appropriate equipment it will have to borrow or hire it. Any reasonable costs incurred in making such an arrangement can be passed on to the applicant, but it cannot exceed the amount the agency actually spent.

Redacting video and audio recordings

See [Managing access to digital video recordings](#) for more information about removing exempt or contrary to the public interest information from, and providing access to, digital recordings.

Methods of redaction

Electronic deletion from written documents

Many agencies now use software called Redax, a plug-in for Adobe Acrobat. Redax (and other similar programs) enables users to:

- delete information from scanned electronic documents
- make a notation about why information was deleted
- number each page
- insert watermarks such as 'released under RTI'
- save the document as a copy of the original with material deleted.

Electronic copies can be provided to the applicant in PDF format. However, it is important to ensure that extra steps are taken to prevent the document being altered or manipulated. For example, PDF documents can be password protected in Adobe Acrobat to prevent them from being altered.

Cover up tape

If electronic deletion is not available or suitable, cover up tape can be used for redaction. Cover up tape is designed to easily lift off documents, but it should only be used on photocopies. This will avoid potential damage and allow the reasons for information removal to be recorded in the margins of the documents.

It is important to check carefully to ensure the final copy of the document has entirely removed the information to which access is being refused.

Notation of reasons for removal

When information is deleted from documents, a notation in the margin or other appropriate area must be made to identify the section under which it was

⁸ A document that consists of an article or material from which sounds or visual images can be reproduced



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removed. For example, the copies could be marked: *'deleted: exempt information under section 48 RTI Act'* or *'deleted: contrary to the public interest under section 49 RTI Act'* as appropriate.

Watermarks

It is recommended that documents released under the RTI Act be watermarked to indicate this. Agencies using Redax or similar software can insert the watermark across the electronic files. Some agencies use a transparency that leaves an *RTI release* watermark to create access copies for the applicant and some photocopiers allow a watermark to be added when printing.

Where the document is not a written document, for example a CD or x-ray, the access copy can still be labelled or otherwise marked to indicate RTI release.

Copyright

It is not the role of the RTI decision maker to interpret contractual arrangements and make complex determinations regarding copyright. However decision makers need to be aware of copyright in general terms and make relevant inquiries where the issue arises.

In Australia, copyright is governed by the *Copyright Act 1968* (Cth). When a decision is made to release documents to an applicant, copyright may apply to some or all of the documents.⁹ Copyright is not grounds to refuse access, however it may impact the form of access that can be given.

If providing access in the form requested by the applicant (eg, copies) would be a breach of copyright then access can be refused in that form.¹⁰ Access can then be given in a form which would not infringe on copyright, which is usually by inspection.

An agency should ensure appropriate conditions are in place during inspection, for example, by ensuring there is adequate supervision, to prevent copying or reproduction of the copyright document.¹¹

When can an agency give access?

An applicant has 40 business days from the date of the decision¹², or from a deferred access period¹³, to access the documents, unless the agency agrees to extend this time. Before they can be given access to the documents they must pay any outstanding processing and/or access charges.¹⁴

An agency can send the documents with the decision notice, as long as there are no fees or charges owing and the documents do not fall under a deferred access

⁹ *Higgins and Education Queensland* (Unreported, Queensland Information Commissioner, 31 March 1999).

¹⁰ under section 68(4)(c) of the RTI Act

¹¹ *Helping Hands Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012), paragraph 88.

¹² Or, if relevant, another decision making entity such as the Information Commissioner – see section 69(3) of the RTI Act.

¹³ Section 69 of the RTI Act.

¹⁴ Section 60(1) of the RTI Act.



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period. If the documents are not being sent with the decision notice, the agency must tell the applicant how to access the documents.¹⁵ If access is deferred to any documents, that must be explained in the decision notice.

Once the applicant seeks access, the agency should give them the documents as soon as possible.¹⁶

Access by download link

If access to the document is being given by way of download from a weblink (usually emailed to the applicant) the link must be active for at least 40 business days (or the relevant access period). If the link expires before the end of the access period then a new active link must be sent to the applicant (unless they advise they have accessed the documents).

If the applicant does not access the documents within the access period, their right of access expires, although the agency does have the discretion to can extend this timeframe.

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.

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

¹⁵ Section 54(2)(ii) of the RTI Act.

¹⁶ The RTI Act does not provide a specific timeframe for an agency to give access to documents. Section 38(4) of the *Acts Interpretation Act 1954* provided that if not time is provided or allowed then the thing is to be done as soon as possible.