

## Applying the legislation

GUIDELINE *Right to Information Act 2009*

### Applications outside the scope of the Act

**This guideline does not reflect the current law.**

It reflects the *Right to Information Act 2009* and *Information Privacy Act 2009* as they existed prior to 1 July 2025. It has been provided for the use of agencies and Ministers in relation to access and amendment applications received before 1 July 2025.

The *Right to Information Act 2009*<sup>1</sup> (Qld) (**RTI Act**) gives people the right to apply to access documents in the possession or control of Queensland government agencies. The RTI Act also places limitations on this right, specifically excluding some documents and entities from the Act.

#### What is an agency?

Under the RTI Act, people can apply to agencies for documents of agencies.<sup>2</sup> *Agency* is defined in section 14 of the RTI Act, and it does not include the entities listed in schedule 2 of the RTI Act. *Document of an agency* is defined in section 12 of the RTI Act and does not include the documents listed in schedule 1 of the RTI Act.<sup>3</sup>

Refer to [What is an agency](#) and [Documents of an agency and a Minister](#) for more information.

#### Outside the scope of the Act

Under section 32 of the RTI Act, an entity can decide that a purported application is outside the scope of the Act if it:

- is for a document which is a document to which the Act does not apply; or
- has been made to an entity to which the Act does not apply.

A purported application is also outside the scope of the Act if it is made to the Information Commissioner, Right to Information Commissioner, or Privacy Commissioner.

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

<sup>2</sup> And to Ministers for documents of Ministers. References in this guideline to an agency include a Minister unless otherwise specified.

<sup>3</sup> Document of a Minister is defined in section 13; it also excludes documents listed in schedule 1.

## Dealing with an application outside the Act

Under section 32, an agency must give the applicant written notice that their application is outside the scope of the Act within ten business days of receiving the application. This is a reviewable decision.

Agencies should endeavour to deliver the notice in time, but failing to do so does not change the status of the application.<sup>4</sup>

## Dealing with a mixed application

In some circumstances, agencies will receive applications that include documents of an agency and documents excluded from the Act under schedule 1 or schedule 2, part 2 of the RTI Act. The OIC refers to these as mixed applications.

In the first instance, the agency should discuss the situation with the applicant and ask if they're willing to remove the documents excluded from the Act. If the applicant agrees, the agency can process the remaining documents. If the applicant refuses, or contact was not appropriate in the circumstances, the agency will need to issue a prescribed written notice under section 32(2) for the entire application.

## Documents excluded from the Act

Schedule 1 of the RTI Act lists documents to which the RTI Act does not apply. These documents are not subject to the RTI Act and there is no right to apply for them. An application for access to a schedule 1 document is outside the scope of the RTI Act.

For more information on the documents listed in schedule 1 of the RTI Act, refer to Documents to which the RTI Act and IP Act do not apply.

## Entities excluded from the Act

Schedule 2, part 1 of the RTI Act list entities which are entirely excluded from the RTI Act.<sup>5</sup> An access application made to an entity listed in schedule 2, part 1 of the RTI Act is outside the scope of the RTI Act.

Schedule 2, part 2 of the RTI Act lists entities which are only excluded in relation to the listed function. An access application made to an agency listed in schedule 2, part 2 requires an assessment of the application to determine which functions it relates to. If it relates to a function mentioned in schedule 2, part 2, the application is outside the scope of the RTI Act.

<sup>4</sup> *Stella v Griffith University* [2025] QCATA 20, paragraph 86.

<sup>5</sup> Note that, while this does not relate to a GOC's access or amendment obligations under the IP Act, under the IP Act, GOCs are excluded from the application of the privacy principles.

## Schedule 2, part 2 entities

### RTI Processing documents

Documents of the holder of an office connected with a quasi-judicial entity in relation to the entity's quasi-judicial functions are excluded from the Act.<sup>6</sup>

The Commissioner found in *T71 and Queensland Police Service*,<sup>7</sup> that:

- the Information Commissioner is a quasi-judicial entity
- the Information Commissioner's external review functions are quasi-judicial functions; and
- an agency decision-maker who processes an access application and makes a reviewable decision on the application is 'connected with' the Information Commissioner in relation to the Information Commissioner's quasi-judicial functions.

This means that an agency's RTI and IP initial processing documents, as well as any internal review processing documents, are excluded from the relevant Act as documents that are 'in relation to' the exercise of the Information Commissioner's quasi-judicial functions. The application does not need to have proceeded to an external review for its processing documents to be excluded from the Act.

### Other Judicial and quasi-judicial entities and functions

Judicial entities are excluded from the RTI Act for their judicial functions, including judicial administration, quasi-judicial entities are excluded for their quasi-judicial functions, and tribunals are excluded for both.<sup>8</sup>

Judicial functions are typically characterised by:<sup>9</sup>

- the settlement of disputes about existing rights and obligations, rather than the determination of future rights and obligations
- settling disputes between identified, rather than hypothetical or abstract, parties; and
- making decisions which are binding upon the parties.

An important factor is whether the function is performed in a judicial manner, ie:

- whether the decision maker applies established legal standards rather than a policy discretion;<sup>10</sup> and
- whether the decision maker is independent and not subject to direction or control<sup>11</sup>.

Other factors which may suggest the exercise of a judicial function are that the:

- body hearing the dispute is bound by the rules of evidence
- body normally hears disputes in public, unless there is a good reason to do otherwise; and

<sup>6</sup> Under schedule 2, part, item 7 of the RTI Act.

<sup>7</sup> [2022] QICmr 10 (4 March 2022) (T71), applying the commentary of Hoebe J in *Carmody v Information Commissioner & Ors* (5) [2018] QCATA 18; upheld in *Stella v Griffith University* [2025] QCATA 20.

<sup>8</sup> Schedule 2, part 2, items 1, 3, and 6

<sup>9</sup> *Huddart Parker and Co Ltd v Moorehead* (1908) 8 CLR 330, Griffith CJ at page 557.

<sup>10</sup> *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at 190-1.

<sup>11</sup> *Owen v Menzies & Ors* [2012] QCA 170 at paragraphs 14 -16.

- parties have a right to legal representation.

A quasi-judicial entity possesses some, but not all, of the characteristics of a judicial entity. A body exercising a quasi-judicial function will often:<sup>12</sup>

- have two parties to proceedings
- conduct hearings in public
- allow parties to have legal representation
- be required to act consistently with the requirements of justice; and
- be required to give reasons for its decision.

However, it may not be bound by the rules of evidence, consist of individuals appointed for a limited term, and/or make recommendations rather than binding decisions.

#### Review bodies

Some review bodies will be quasi-judicial entities in relation to some of their functions. For example, *T71 and Queensland Police Service* determined that the Information Commissioner is a quasi-judicial entity, citing *Cairns Port Authority v Albietz*.<sup>13</sup>

*This is a case where there was already a respondent which could effectively oppose the relief sought by the applicant. The ultimate question was whether that respondent should be allowed access to certain documents. The Information Commissioner's role was quasi-judicial and he was by statute required to be the arbiter between two contending parties.*

#### Government Owned Corporations (GOCs)

Several GOCs are included in Schedule 2, part 2. For these GOCs, the RTI Act only applies in relation to their community service obligations. Section 112 of the *Government Owned Corporations Act 1993* states that community service obligations are obligations that:

- (a) *are not in the commercial interests of the GOC to perform; and*
- (b) *arise because of a direction, notification or duty to which this section applies; and*
- (c) *do not arise because of the application of the following key principles of corporatisation (and their elements) –*
  - (i) *Principle 3 – Strict accountability for performance;*
  - (ii) *Principle 4 – Competitive neutrality.*

A GOC listed under schedule 2, part 2 of the RTI Act may not have any community service obligations. Any community service obligations a GOC is to perform must

<sup>12</sup> *Henderson and Legal Practice Committee* (Unreported, Queensland Information Commissioner, 30 November 2011), citing *Re Farnaby and Military Rehabilitation and Compensation Commission* [2007] AATA 1792.

<sup>13</sup> *Cairns Port Authority v Albietz* [1995] 2 Qd R 470; see also *Stella v Griffith University* [2025] QCATA 20.



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be included in the GOC's statement of corporate intent<sup>14</sup> which is prepared each financial year.<sup>15</sup>

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).

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

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<sup>14</sup> Section 113(1) of the GOC Act.

<sup>15</sup> Section 102 of the GOC Act.