



Applying the legislation

GUIDELINE *Right to Information Act 2009*

Applying Willsford - applicants who are pursuing a legal remedy

The object of the *Right to Information Act 2009 (Qld) (RTI Act)*¹ is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to release it.

Third party personal information

In most cases it will be contrary to the public interest to release third party personal information to an applicant. This is because the public interest in privacy protection² will generally outweigh the public interest factors favouring disclosure.

There are exceptions to this. One exception is when the public interest in administration of justice³ outweighs the public interest in protecting third party privacy because disclosure would enable the pursuit or evaluation of an appropriate legal remedy.

Willsford and Brisbane City Council

This public interest favours disclosure when the applicant is pursuing a legal remedy because it could contribute to the administration of justice for that person⁴. It was established in *Willsford and Brisbane City Council*⁵.

In Willsford, the owner of a car which collided with a dog wanted to assess whether she was in a position to recover damages from the owner of the dog, so she applied to the Council for information that would identify the dog's owner.

The Information Commissioner established that a public interest factor favouring disclosure of third party personal information would arise if it could be established that:

1. loss or damage or some kind of wrong had been suffered in respect of which a remedy was, or might be, available under the law
2. the applicant had a reasonable basis for seeking to pursue the remedy; and
3. disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy was available, or worth pursuing.

These are referred to in this guideline as the Willsford Criteria.

¹ And the *Information Privacy Act 2009* (Qld).

² Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

³ Schedule 4, part 2, item 17 of the RTI Act.

⁴ Schedule 4, part 2, item 17 of the RTI Act.

⁵ [\(1996\) 3 QAR 368 \(Willsford\)](#), decided under the now repealed *Freedom of Information Act 1992*.



Office of the Information Commissioner
Queensland

Note

All three Willsford Criteria must be met for the administration of justice factor to apply in circumstances where the applicant claims to be pursuing a legal remedy.⁶ If even one is not present, the decision maker cannot take it into account.

Assessing the application

RTI applicants are not required to say why they want to access documents. However, they often include information about their reasons in their application. If a decision maker believes an applicant wants access to documents to pursue a legal remedy, or assess whether doing so is possible or worthwhile, they can confirm this and, if required, request additional information.

How much information is needed will depend on the circumstances, however the onus will always be on the applicant to establish they require the information to pursue, or assess the viability of pursuing, a legal remedy because they have suffered a wrong. This requires more than just an assertion or statement.⁷ The decision maker needs details, and where necessary, evidence, of any potential legal remedy the applicant may be pursuing.

Note

Providing the applicant with the OIC's Information Sheet [Accessing documents to pursue a legal remedy](#) may help provide the necessary information.

Loss, available remedy, and a reasonable basis to pursue it

The applicant needs to demonstrate that they have suffered a loss for which a legal remedy is available (Willsford Criteria 1) and that they have a reasonable basis for seeking to pursue the remedy (Willsford Criteria 2).⁸

The legal remedy cannot be one that may potentially arise in the future. It must presently exist or be one which, based on past or present circumstances, is being evaluated.⁹ For example:

- Person A drove a vehicle through Person B's fence and Person B is seeking access to documents in order to commence action, or to evaluate whether it would be worthwhile taking action, against Person A for damages.

⁶ [Kalman and Queensland Police Service 2016 QICMR 17 13 May 2016](#); [94HQWR and Queensland Police Service \[2014\] QICmr 45 \(10 November 2014\)](#)

⁷ [Lester and Queensland Police Service \[2017\] QICmr 11 \(27 March 2017\)](#)⁸ [EF9TO8 and Department of Transport and Main Roads \[2016\] QICmr 19 \(3 June 2016\)](#)

⁸ [EF9TO8 and Department of Transport and Main Roads \[2016\] QICmr 19 \(3 June 2016\)](#)

⁹ [Z Toodayan and Metro South Hospital and Health Service 2017 QICMR 34 11 August 2017](#)



Office of the Information Commissioner
Queensland

- Person C believes that Person D has infringed their intellectual property by using Person C's building plans and submitting them to an agency as their own. Person C applies for access to the plans and other documents submitted by Person D in order to take action, or to assess whether they can take action, for breach of copyright.

The information must be required for the remedy

To fulfil Willsford Criterion 3, the applicant must need the information to pursue their remedy. If they can do so without the information the agency holds, for example if there is another source of the information or if the information is not actually required, a criterion will not have been met.

For example, Willsford Criterion 3 will not be met if the applicant:

- believes a person or entity whose identity they know has made misleading or incorrect public statements about them, as it is not necessary to obtain documents from an agency in order to take action against that person or entity¹⁰
- has already begun the process they stated they needed the documents to begin¹¹; or
- advised that they needed the information in order to begin a process but they had already been given the information they applied for¹².

Applying the Willsford Criteria

Previous circumstances where the Willsford Criteria have been met and the administration of justice factor found to apply are set out below.

1OS3KF and Department of Community Safety

In *1OS3KF and Department of Community Safety*¹³, information identifying an individual was released on the basis that:

- the applicant had suffered significant property loss as a result of a fire
- it was open to the applicant to pursue civil action in negligence for that loss
- the applicant was not able to pursue civil action without the name of the person who most likely started the fire, because such action cannot be pursued without an identified defendant; and
- disclosure of the information identifying the relevant individual would assist the applicant to pursue, or consider pursuing a legal remedy.

Volep and Queensland Police Service

In *Volep and Queensland Police Service*¹⁴, the applicant had suffered a personal injury and sought compensation for injuries under the *Motor Accident Insurance Act 1994 (Qld) (MAI Act)*. He was unable to sign the certificate of readiness for

¹⁰ [Williams and Queensland Police Service \[2017\] QICmr 28 \(4 August 2017\)](#)

¹¹ [Jose and Queensland Police Service \[2014\] QICmr 7 \(7 March 2014\)](#)

¹² [XX5WZ9 and Queensland Police Service \[2019\] QICmr 3 \(14 February 2019\) \(310458\) 16 December 2011.](#)

¹⁴ [\(311152\) 19 April 2013.](#)



Office of the Information Commissioner
Queensland

trial because he could not obtain the identities of the witnesses, nor obtain statements from them.

Access was granted to the names and addresses of witnesses, significant weight being given to the administration of justice factors because it was in the public interest to ensure that:

- the object of the MAI Act (to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents) was supported; and
- the applicant have an opportunity to properly pursue a remedy for personal injuries under the MAI Act.

EF9TO8 and Department of Transport and Main Roads

In *EF9TO8 and Department of Transport and Main Roads*¹⁵ the applicant's client had:

- provided finance to a third party for the purchase of a vehicle
- has suffered damage by the failure of the third party to make the agreed repayments on the loan
- held a registered security interest over the vehicle in accordance with the loan contract; and, the third party having on sold the vehicle without discharging the loan,
- required the registered garaging address of the vehicle in order to pursue a lawful remedy, or to consider pursuing such remedy.

Based on the provided evidence, the applicant's client had suffered a loss for which a legal remedy—enforcing its rights under the loan contract—was available and disclosure of the registered garaging address could reasonably be expected to contribute to the administration of justice by enabling them to pursue that legal remedy.

Circumstances where the Willsford Criteria may not apply

Appeals and court ordered costs

The right to pursue an appeal will not be a legal remedy for the purpose of Willsford Criterion 1, and an order made by a court or other competent body will not constitute loss or damage.

This was set out in *Bruce Dullely Family Lawyers and WorkCover Queensland*¹⁶.

The applicant had been ordered to make payments to an injured employee and disputed that order, first in Q-COMP and then in the Queensland Industrial Relations Commission (**QIRC**), which was ongoing at the time of the application. The access application was for all information on the employee's WorkCover file, which the applicant stated was needed to assist in its legal avenues, including the appeal to the QIRC and any potential related common law claim.

¹⁵ [\[2016\] QICmr 19 \(3 June 2016\)](#).

¹⁶ [\(310859\) 26 July 2012](#)



Office of the Information Commissioner Queensland

The Assistant Information Commissioner, considering the Willsford Criteria, held that:

In my view, a WorkCover order to make payments to an injured employee does not constitute a loss, damage or actionable wrong to the employer, as identified by the Information Commissioner in Willsford. Similarly, while there are avenues of appeal available to an employer who contests a decision to accept a claim and/or quantum, I am not satisfied that pursuing an appeal is equivalent to pursuing a remedy for an actionable wrong.¹⁷

Complaint information and defamation actions

The Willsford Criteria will generally not apply if an applicant applies for complaint information with the intent of taking action for defamation.

Complaint information is subjective; it is an "individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions¹⁸." The fact that it is subjective, however, does not mean that statements or documents arising from it are defamatory.

As such, disclosure of complaint information would generally not enable an applicant to pursue a defamation action. This is particularly the case where the information is opinions of people the applicant is *not* considering taking action against.¹⁹

Complaints to law enforcement bodies

An intention to make a complaint to the police or other law enforcement body about a breach of the law will not trigger consideration of the Willsford Criteria. Making a complaint of this nature is not the same as seeking a legal remedy. Additionally, people have the right to make complaints of this kind if they are concerned that the law has been or may be broken.

Complaints to regulatory bodies

Generally, intending to make a complaint to a regulatory body, eg the Queensland Ombudsman or the Australian Financial Complaints Authority, would not trigger consideration of the Willsford Criteria as complaints of this nature are not strictly a legal remedy. Additionally, people whose issues or concerns fall within the regulatory body's jurisdiction have the right to make complaints to them.

There may be exceptions. For example, if the regulatory body has advised the applicant that their complaint cannot be accepted without specific information being provided, and the agency is the only source of the information.

¹⁷ At paragraph 31.

¹⁸ [WL1T8P and Queensland Police Service 2014 QICMR 40 16 October 2014](#); [Suskova and Council of the City of Gold Coast 2015 QICMR 31 27 November 2015](#)

¹⁹ [F60XCX and Department of Natural Resources and Mines \[2017\] QICmr 19 \(9 June 2017\)](#)



Third party consultation

Under the RTI Act²⁰, if a decision maker is considering releasing information the disclosure of which would reasonably be of concern to a third party, they must take reasonable steps to consult with that third party.

Applicants seeking access to information to pursue a legal remedy are, in almost all cases, seeking access to third party personal information. This will usually include the name of the third party (if not already known to the applicant) and their address and contact details.

This information would generally be contrary to the public interest to disclose and may have significant consequences, ie having legal action taken against them, for the third party if it is released. As such, the third party would be reasonably likely to be concerned about the release of the information.

Except in very unusual circumstances, agencies will need to take reasonable steps to consult with the third party where they have decided to release.

Success of the legal remedy is irrelevant to consultation

It is important to remember that the potential success, or otherwise, of the applicant's potential legal action is not relevant when making the decision to consult. The only considerations are:

- is the third party reasonably likely to be concerned about the release of the information; and
- are there any reasonably practicable steps the decision maker can take to consult?

Consultation may provide extra information

In addition to being required under the RTI Act, consultation can potentially provide the decision maker with additional information. For example, consultation might reveal:

- That the registered owner of a dog, whose details the decision maker was considering releasing, was not the person in control²¹ of the dog at the relevant time because the owner was working overseas.
- That the creditor applicant seeking the garaged address of a motorcycle—which was sold to the consulted third party without the loan being discharged, so the creditor still had security over the motorcycle—actually has a payment plan in place with the person who took out the loan.

Both circumstances would impact on the application of the Willsford Criteria. In the first example, as the owner of the dog was not responsible for the dog when the event occurred, they may not be the right person against whom to take action.

²⁰ Section 37 – see [Consulting with a relevant third party](#) for more information.

²¹ Under section 10 of the *Animal Management (Cats and Dogs) Act 2008* the responsible person for a dog is the person who has immediate control or custody of the dog.



Office of the Information Commissioner
Queensland

In the second example, the creditor has no legal remedy (ie recovery of the motorcycle) to pursue as the loan is being paid off.

Resolving third party concerns – residential address

Third parties will often be particularly concerned about the release of their residential address.

Depending on the circumstances, decision makers may want to discuss with the applicant and third party whether the applicant would accept, and the third party would not object to, phone numbers, email addresses, and/or post office boxes being released instead of residential addresses.

This can often resolve the matter to the reasonable satisfaction of both parties and avoid applications being taken to review.

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.

Published 25 June 2019 and Last Updated 25 June 2019

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