

IPOLA GUIDELINE

Applying the legislation – Right to Information Act 2009

Who can make decisions under the RTI Act

This guide does not reflect the current law.

It highlights important changes to the *Right to Information Act 2009*.

This guide does not constitute legal advice and is general in nature only. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

1.0 Overview

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access documents of an agency,¹ and to amend their personal information contained in documents of an agency, subject to some exceptions and limitations.

The principal officer of the agency and the Minister are the decision makers for access applications.

2.0 Who is the principal officer of an agency?

Principal officer is defined in schedule 5 of the RTI Act. This table sets out who the principal officer is for each type of agency.

Agency	Principal Officer
Departments	The chief executive
Public authorities with a principal officer declared by regulation	The holder of the office declared by regulation to be the principal officer
Public authorities constituted by one person	The person who constitutes the public authority

¹ In this guideline, references to an agency include a Minister unless otherwise specified.



Public authorities constituted by two or more persons	The person who is entitled to preside at a meeting at which the presiding person is present.
Local governments	The chief executive
Universities ²	The Office of the Vice-Chancellor
Government owned corporations and their subsidiaries	The chief executive

3.0 Who can be given the power to deal with an application

Principal officers can delegate the power to deal with an application to **another officer** of the agency.³ An *officer* of an agency is defined in schedule 5 of the RTI Act to include a member of the agency, a member of the agency's staff and a person employed by or for the agency.⁴

With the exception of local government principal officers, a principal officer can also delegate their powers to the principal officer of **another agency** with their consent. This power can then be sub-delegated within the second agency.

A Minister can direct any person to deal with an application for the Minister⁵.

3.1 Healthcare decisions

Only the principal officer or Minister, or an appropriately qualified healthcare professional appointed by them, can make a healthcare decision.

Healthcare decisions are decisions about whether to refuse access to the applicant's own relevant healthcare information because releasing it might be prejudicial to the applicant's physical or mental health or wellbeing.

The usual delegation or direction arrangements explained above do not apply to healthcare decisions. A principal officer of an agency or a Minister can only appoint an appropriately qualified healthcare professional to make a healthcare decision.⁶

3.2 Deemed decisions

If an applicant is not given a considered decision by the end of the processing period, a decision to refuse access or amendment is taken to have been made by the principal officer or Minister.

² See section 10 of the *Right to Information Regulation 2009*.

³ See sections 30 and 78H of the RTI Act.

⁴ As well as the principal officer themselves.

⁵ See sections 31 and 78I of the RTI Act.

⁶ See definitions of *healthcare professional* and *appropriately qualified* in schedule 5 of the RTI Act.

Delegation or direction is not possible for a deemed decision, but a delegated or directed officer can prepare and issue the notice of deemed decision.

3.3 Internal review decisions

An internal review decision cannot be decided by the same person who made the decision that is being internally reviewed, or by a person who is less senior than that person⁷.

4.0 Instrument of delegations or direction

Delegations and directions can be made to a person by name, or to an officer by position title. Using a position title prevents a fresh delegation having to be made whenever the individual is absent, for example, takes leave, acts in other positions, or permanently vacates the position.

A written instrument of delegation from the principal officer or written direction from the Minister removes any doubt about whether a decision is lawfully made by a person other than the principal officer or Minister.

5.0 Power to deal with the application

Section 27A of the *Acts Interpretation Act 1954* (Qld) provides generally for the delegation of functions or powers.

The power to deal with an application includes the power to make decisions on the application, e.g., that the application is compliant, that a charge is payable, that a third party would be concerned about release, or that information is exempt from release. It also includes the power to deal with an internal review application.

6.0 Independent exercise

The power to deal with an application must be exercised independently and not under the direction of another person.⁸ This does not preclude internal discussions and consultations, or appropriately briefing executive officers.

For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

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⁷ See section 80(3) of the RTI Act.

⁸ Section 175 of the RTI Act provides that it is an offence to direct a person to make a decision they do not believe should have been made.