



Applying the legislation

GUIDELINE - *Right to Information Act 2009 and Information Privacy Act 2009*

When is an application noncompliant?

Where an applicant makes an access application under the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ that is not valid (called a purported application) an agency is required to follow specific steps, giving the applicant a chance to make the application valid. If the applicant does not make their application valid, the agency² can make a decision not to process the application. This is a reviewable decision.

What is a valid application?

The requirements of a valid application are set out in section 24 of the RTI Act and section 42 of the IP Act.

RTI Act	IP Act
Be on the approved form, unless the agency decides to accept it in another way that contains all the information requested by the form. See 'Substantial compliance' below.	
Be accompanied by the application fee.	No application fee required.
Give sufficient information concerning the document to enable an officer of the agency to identify it.	
State whether or not the applicant is accessing the documents to benefit another entity (the beneficiary) and, if they are, identify the beneficiary.	No beneficiary requirement.
Include evidence of ID, and if the applicant has an agent, include evidence of the agent's ID and evidence of authority ³ , <i>only</i> if the application is for the applicant's personal information.	Include evidence of ID, and if the applicant has an agent, include evidence of the agent's ID and evidence of authority ⁴ , for all applications.
State an address to which notices may be sent.	

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

² In this Guideline, references to an 'agency' also include Ministers, unless otherwise specified.

³ Or evidence of relationship where it is a parent applying on behalf of a child.

⁴ Or evidence of relationship where it is a parent applying on behalf of a child.



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Refer to Appendix One for assistance on determining who is the applicant, who is the agent, and who is the beneficiary.

Substantial compliance

While the Act requires applications to be made on the approved form, agencies have the discretion to accept applications in another way—as long as that way substantially complies with the application form.⁵ This could happen, for example, where the applicant sends an email or letter to an agency that contains substantially the same information required by the application form

Evidence of identity and authority

Identification requirements are set out in the *Right to Information Regulation 2009*⁶. Evidence of authority requirements can vary, depending on the relationship between the applicant and their agent. Agencies should refer to [Evidence of Identity and Authority](#) for more information.

Accompanied by the application fee

Generally, if payment accompanies the application, the application will be valid when it is received by the agency (presuming all other application requirements are satisfied), regardless of how long the agency takes to process the payment. There are some exceptions, however.

If there is a form of payment the agency cannot process, or has made a policy decision not to accept, the application will not be valid when accompanied by that form of payment.

Similarly, if there is a form of payment the agency can only accept in a specific way, the application will not be valid when accompanied by that form of payment made in a different way. For example, if the agency is only able to accept credit card payments made over the phone, even if the applicant includes their credit card details on the application form, the application will not be valid until the applicant makes payment in a way the agency is able to process.

In these circumstances, applicants should be advised of the payment issues as quickly as possible. It would also be best practice to include any payment limitations on the agency's website.

⁵ Section 48A of the *Acts Interpretation Act 1954*.

⁶ And the *Information Privacy Regulation 2009*.



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Sufficient information concerning the document to enable an officer of the agency to identify it

An access application must give sufficient information concerning the document to enable a responsible officer of the agency to identify the document. Applicants must describe the documents they want to access with sufficient specificity to allow the decision-maker to identify the documents being applied for, conduct searches for the documents; and make decisions on the documents.

The size of the agency and the way documents are stored and filed (eg centrally versus regionally) will be relevant when making this determination.

For detailed information on assessing the terms of an application to determine if it is valid, please refer to [Assessing the Terms of an Access Application](#).

What if an application is non-compliant?

Remember

The processing period does not commence until the application complies with the requirements of the Act.

An agency must make reasonable efforts to contact the applicant within 15 business days to tell them why their application is non-compliant⁷ and give them a reasonable opportunity to consult with the agency with the goal of making the application compliant. What is reasonable will depend on the circumstances.

OIC encourages agencies that have received noncompliant applications from applicants in extenuating circumstances, such as prisoners, to consider allowing a minimum of 20 business days. For all other applicants, 15 business days will generally be reasonable if there are no circumstances which could delay the process.

It may be necessary to work with the applicant to make their application compliant, and agencies should consider extending time where it is appropriate to do so. If the applicant does not make the application compliant, the agency can make a decision not to process the application.

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.

⁷ Section 33 of the RTI Act.



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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.

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



Appendix One

Who is the applicant?

The applicant is the person who is seeking the document, as per the completed form. They can never be the same person as the agent or the entity for whose benefit the applicant is applying (the beneficiary). Generally, the person who pays the application fee will be the applicant.

People completing the application form may be confused about whether they answer the question referring to agents or to beneficiaries if they are applying on someone else's behalf. If they have put the same details in both sections of the application form you will need to contact them to clarify the situation.

There are a number of possible combinations of agent, applicant and beneficiary:

- **Applicant** (individual or company/organisation with a nominated contact person).

Examples

Rory (**applicant**) applies for access to Amy's personnel file.

New Dog Magazine (**applicant**) applies for documents about the Department of Dogs' State-wide ban on off-leash dog parks. Donna is a journalist employed by the Magazine and the nominated contact person.

- **Applicant** (eg. individual or company/organisation with a nominated contact person) who intends to benefit another entity⁸.

Examples

A freelance journalist (**applicant**) wants to demonstrate to New Dog Magazine that her proposed story is accurate; she applies to the Department of Dogs for access to documents about the number of purebred dogs registered in the last decade, intending to give the documents to the Magazine (**beneficiary**).

A parent (**applicant**) applies to the Department of Roads for information about plans to upgrade a road near their children's school. They intend to give the information they receive to the Parents & Citizens Association (**beneficiary**).

⁸ An agency is not required to independently establish whether an applicant intends to benefit another entity; they can rely on what the applicant tells them.



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- Agent acting on behalf of **Applicant**.

Examples

Tony (**applicant**) wants to access his complaint file from the Department of Complaints but he is in hospital. He asks Sandra (**agent**) to make the application for him and deal with the process.

New Dog Magazine (**applicant**) intends to sue their competitor and wants access to the Department of Publications' records. They retain a lawyer (**agent**) to make the application on their behalf.

- Agent acting on behalf of **Applicant** and the applicant has the intention of benefiting another entity.

Example

New Dog Magazine (**applicant**) retains a lawyer (**agent**) to apply on its behalf to the Department of Dogs for documents about their ban on off-leash parks. They intend to give any documents they access to the Dog Club (**beneficiary**) and the local newspaper (**beneficiary**).