



## Applying the legislation

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

### Refuse access to a document – other access available

The *Right to Information Act 2009*<sup>1</sup> (Qld) (**RTI Act**) allows people to apply for access to documents held by agencies<sup>2</sup>. However, an agency may refuse access to a document if it is otherwise available.<sup>3</sup> This guideline is intended to assist decision makers considering refusing access to a document because other access is available to it.

#### Can the agency choose to provide access under the RTI Act?

An agency is not required to refuse access to a document where other access is available, however if an agency does choose to give access under the RTI or IP Act the applicant should not face higher fees than under the alternative access method.

#### When is other access available to a document?

Other access is available to a document if the applicant can reasonably access the document under another Act, or under arrangements made by an agency, whether or not the access is subject to a fee or charge.

Documents which would fall under this subsection are those available:

- in an agency's disclosure log (see section 78 and 78A of the RTI Act)
- in publicly available transcripts of court proceedings
- in agencies' policy documents
- for purchase under an established access scheme.

The Commissioner has previously determined that documents tendered in court and marked as exhibits and court transcripts were reasonably available 'under another enactment'. Similarly, if an applicant has issued a notice of claim to a Department, all documents relevant to the matters in issue can be obtained from the Department in pre-court procedures under the *Personal Injuries and Proceedings Act 2002* (Qld) and will therefore fall within section 53(a) of the RTI Act.

Allowing agencies to refuse access under the RTI Act to documents available by other means ensures specialised access regimes provided for in other Acts or agency-specific access schemes are not overridden.<sup>4</sup> The presence of restrictions on accessing documents under those statutory schemes or arrangements, however, may invalidate this ground for refusing access.<sup>2</sup>

<sup>1</sup> And the *Information Privacy Act 2009* (Qld) (**IP Act**). References in this guidelines to the RTI Act include the IP Act.

<sup>2</sup> In this Guideline, references to an 'agency' include Ministers, unless otherwise specified.

<sup>3</sup> See section 47(3)(f) of the RTI Act.

<sup>4</sup> The scope of section 22 of the repealed *Freedom of Information Act 1992* (FOI Act) (the equivalent to section 53 of the RTI Act) was considered in *JM and Queensland Police Service (1995) 2 QAR 516*.



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### **Not all information is available to every applicant**

Before a decision maker refuses access because other access is available they must consider whether the applicant can 'reasonably access' the documents they have applied for.

In some cases access to information is restricted. For example, transcripts from the Magistrates Court are usually only available to a person whom the Registrar deems to have a sufficient interest in the matter. Such restrictions may have the practical effect of denying access to all or some of the particular documents sought.

The Commissioner has found that the below may affect whether access is reasonably available to the applicant<sup>5</sup>.

#### ***The applicant***

If access to the requested document is reasonably available to the particular applicant, access may be refused provided that other aspects of the reasonableness test are met. It does not matter that access is not available to the general public or all members of the community. For example, if an applicant is able to access a copy of their own criminal history through administrative access procedures of the Queensland Police Service other access to that document would be available to that applicant.

#### **Cost**

The fact that other access is only available for a fee is not enough on its own to make access unreasonable. It may be different if an agency's access scheme has unreasonably high fees, which markedly exceed reasonable cost recovery. Where the document is available for purchase, the reasonableness of access may also depend on the availability of stock

#### **Geography**

A scheme requiring a person to travel to an agency to inspect documents might mean that an applicant cannot reasonably access that document, particularly where the applicant lives a considerable distance from the agency.

### **Documents available for public inspection**

Other access is available if the document is reasonably available for public inspection under the *Public Records Act 2002* (**Public Records Act**) or in a public library<sup>6</sup>. The document does not have to be reasonably available for public inspection by the particular applicant, merely that it be reasonably available for inspection by the public in general.

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<sup>5</sup> *JM and Queensland Police Service* (1995) 2 QAR 516 at paragraphs 38, 40 and 41.

<sup>6</sup> See *Candy and Environmental Protection Agency* (Unreported, Queensland Information Commissioner, 25 November 2008)



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For example, where the document has been placed in the State Library of Queensland and is generally available to the public the fact that the applicant resides in Far North Queensland does not mean the agency is unable to rely on this section to refuse access.

### **Copies of documents stored at Queensland State Archives**

Other access is available to a document if it is stored for preservation or safe custody in the Queensland State Archives (QSA) and it is a copy of a document of an agency.

This covers those documents held by QSA which are copies of agency documents. It allows agencies to refuse access to documents if copies can be accessed at QSA.

The mere fact that a document is held by QSA does not mean that an agency may refuse access to the documents. Before refusing access the agency should establish whether the document is subject to a restricted access period. If it is, they should ascertain whether access to the applicant would be approved by a person with authority to provide it under the Public Records Act.

### **Documents in the restricted access period**

Section 18(1) of the Public Records Act provides a general right of access to public records which are not subject to a restricted access period. A 'restricted access period' is defined in section 16 of the Public Records Act and is based by the content of the record.

Generally the restricted access period is thirty years from the date of the last action on the file. However, if a record contains information about the personal affairs of an individual the restricted access period increases to 100 years.

### **Commercially available documents**

Other access is available to a document if the document is commercially available. This may cover a number of documents available for a fee under an agency scheme. However, it would also cover documents held by agencies which have not been produced by those agencies. This would include documents such as maps and property titles data available from the Titles Office.

### **What should an agency do if they refuse access?**

If an agency intends to refuse an applicant access to documents on the basis that other access is available, the applicant should be advised of this fact as soon as possible. The decision maker should also give the applicant details about how to access the alternative access arrangements.

If it is a type of information which can only be provided to a particular applicant, the agency or Minister should advise the applicant of what needs to be established to obtain access.



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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).

**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](mailto:feedback@oic.qld.gov.au).

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