



Applying the legislation

GUIDELINE *Right to Information Act 2009*

RTI and documents available through court processes

Under the *Right to Information Act 2009* (RTI Act), people have the right to apply for access to documents held by Queensland government agencies. In some circumstances an applicant may also be able to access this information through a court process, but this does not remove their right to apply under the RTI Act¹.

Access through the courts

When people are involved in a court matter, specific court processes, such as subpoenas, will be available to them. These court processes can be used for accessing information and documents from government.

Refusal of access because document is available through other means

Section 53 of the RTI Act allows an agency to refuse access if the applicant can reasonably access the documents under another Act or another arrangement made by an agency. An applicant's involvement in a court matter which may allow them to acquire information through a process such as a subpoena will not generally be sufficient to satisfy section 53.

When can an agency refuse access under section 53?

An agency can only refuse access to a document under section 53 if full access to the document is guaranteed under the alternative access option². For more information see [Previous application for same documents](#).

Access under a court process is not guaranteed. It is subject to its own rules, generally requires the approval or authority of a judicial officer, and the documents may be provided to the *court*; the applicant may not be given copies. In some cases the court process will only allow access to *parts* of the document; for example, sensitive information relating to a victim in a sexual assault case may be removed.

What a person is able to access through a court process will depend on the circumstances of the proceeding and the applicant's role in it. For this reason, it is not possible to have a policy in place that states all requests made by an applicant involved in a court process may be refused.

¹ Or the *Information Privacy Act 2009* (Qld) (IP Act). References in this guideline to the RTI Act include the IP Act.

² 'JM' and *Queensland Police Service* (1995) 2 QAR 516.



Office of the Information Commissioner
Queensland

A person involved in a court process who is seeking access to documents under the RTI Act has the same rights as any other person to apply for documents, receive a decision about access, and exercise review rights under the legislation. An agency must not refuse to process an application because it relates to documents that may be available through a court process.

Explaining the other options that are available

In some cases the applicant may be unaware that other options are available. The agency may wish to advise them and explain there is alternative access available through the court, and set out the different kinds of documents available through the court and RTI process. It is important that the agency advise the applicant that they can pursue their access application as well as the alternative access options, along with the consequences of withdrawing their application³.

What if the documents are with legal representatives outside the agency?

The RTI Act applies to documents in the physical possession of the agency and to documents which the agency has the legal right to control. Even if documents have been sent to a prosecutor, Crown Law, or an independent lawyer, people still have the right to access them by applying to the agency.

See [Agency documents held by third party legal providers](#) for more information.

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

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

³ If, after explaining alternative options for accessing documents, an applicant chooses to withdraw their RTI or IP access application, this agreement should be confirmed in writing between the applicant and agency to ensure the outcome is clearly understood and as a record for the file.