



Applying the legislation

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

Neither confirm nor deny checklist

The *Right to Information Act (Qld) (RTI Act)* and *Information Privacy Act (Qld) (IP Act)* permit agencies¹ to respond to an access application by neither confirming nor denying the existence of the documents sought.

Before applying this exception, a decision maker must be satisfied that if the documents existed, they would contain prescribed information under section 55 of the RTI Act or section 69 of the IP Act. These sections provide that an agency is not required to give information as to the existence or non-existence of a document containing prescribed information.

The rationale for this type of response is that in some situations, any other response given by the agency would reveal information² that could cause harm or would be contrary to the public interest.

The checklist in Appendix A has been developed to assist in determining whether an agency is entitled to neither confirm nor deny the existence of a document. This should be determined on a case by case basis in the circumstances and context specific to each situation.

Prescribed information

'Prescribed information' is defined in schedule 5 of the RTI and IP Acts as particular types of exempt information³ or personal information the disclosure of which would be, on balance, contrary to the public interest.

In some situations, a neither confirm nor deny response may not be appropriate even though the information is prescribed information. For example, it would not be appropriate to neither confirm nor deny the existence of a document if the applicant already has evidence proving the document's existence.

For additional information and assistance please refer to Guideline [Neither confirm nor deny the existence of documents](#) and the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email enquiries@oic.qld.gov.au.

¹ In this Guideline, references to an 'agency' include Ministers, unless otherwise specified.

² See Schedule 5 of the RTI and IP Acts.

³ Exempt information mentioned in Schedule 3, section 1, 2, 3, 4, 5, 9 or 10.



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APPENDIX A

Step One: Would the information be ‘prescribed information’ if it existed?

Schedule 3 of RTI Act – Exempt information	Yes	No
<p>If the document existed would it contain exempt information under schedule 3, section 1, 2, 3, 4, 5, 9 or 10 of the RTI Act⁴?</p> <ul style="list-style-type: none"> • Schedule 3, section 1 – Cabinet matter brought into existence before commencement • Schedule 3, section 2 – Cabinet information brought into existence on or after commencement • Schedule 3, section 3 – Executive Council information • Schedule 3, section 4 – Information briefing incoming Minister • Schedule 3, section 5 – Information revealing particular Sovereign communications • Schedule 3, section 9 – National or State security information • Schedule 3, section 10 – Law enforcement or public safety information 		

If you answer **yes** information contained in the document sought would be ‘prescribed information’ and it would be appropriate to use the neither confirm nor deny provision. Proceed to Step Two.

If you answer **no**, please continue.

Personal information	Yes	No
If the document existed would it contain personal information?		

If you answer **yes**, please continue to the next question.

If you answer **no**, the information in issue is not prescribed information and you cannot ‘neither confirm nor deny’ the existence of the document.

⁴ Please refer to the relevant sections in Schedule 3 for more information.



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Section 47(3)(b) of the RTI Act – Public interest test	Yes	No
If the document existed, would the disclosure of the personal information be, on balance, contrary to the public interest?		

If you answer **no**, the document does not contain prescribed information and does not meet the requirement of section 55 of the RTI Act or section 69 of the IP Act. To be prescribed information, the disclosure of the personal information must be, on balance, contrary to the public interest.

If you answer **yes**, the information in issue is prescribed information and you can consider whether it is appropriate to neither confirm or deny the existence of documents sought in the particular circumstances of the application. Proceed to Step Two.

Step Two: Would it be appropriate to neither confirm nor deny the existence of the documents sought?

Response	Yes	No
Is the document publically available, for example, it is a transcript or document available from a court or is information about the document published and accessible by the public for example, information disclosing the existence of the document is published on the agency's website?		
Can you confirm the document exists without revealing information that could cause harm or would be contrary to the public interest, for example that Bryan is the one who made the complaint about Becker?		
Do other considerations apply that would mean it would not be appropriate to neither confirm nor deny the existence of the documents sought ⁵ ?		

If you answer **yes** to any of the Step Two questions, it would not be appropriate to neither confirm nor deny the existence of the document, because doing so is inconsistent with the provision or undermines the purpose of the provision.

If you answer **no** to all the Step Two questions, it may be appropriate to neither confirm nor deny the existence of the document.

⁵ Please consider whether there are any relevant considerations that may apply.



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Applying section 55 of the RTI Act or section 69 of the IP Act

For assistance in the application of section 55 of the RTI Act or section 69 of the IP Act refer to:

- Guideline: [Neither confirm nor deny the existence of documents](#)
- Checklist: [What is personal information?](#)
- Guideline: [Public interest balancing test](#)
- Guideline: [Exempt information overview](#)

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