



## Applying the legislation

GUIDELINE *Right to Information Act 2009*

### Applications for investigation and complaint documents

The object of the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>1</sup> is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.

#### Investigations and complaints

It is common for people who have been involved in an agency investigation or made a complaint to an agency to apply for access to related documents. In many cases, it will be contrary to the public interest for access to be given to investigation and complaint documents. Decisions of the Information Commissioner have consistently upheld agency<sup>2</sup> decisions to refuse access to these kinds of documents on the grounds discussed in this guideline<sup>3</sup>.

#### Note

This guideline does not discuss investigations conducted by or referred back to the agency by the Crime and Corruption Commission. For further information refer to: [Crime and Corruption Commission](#).

#### Exempt information

Schedule 3 of the RTI Act lists information that is exempt from release without the need to undertake any further public interest considerations. If an agency decides information falls within one of the provisions in schedule 3, for example because it is confidential complaint information or would prejudice an ongoing investigation<sup>4</sup>, it is permitted to refuse access to it without any further public interest considerations. This is because Parliament has already decided the information listed in schedule 3 is contrary to the public interest to release.

#### Example

Sections of schedule 3 part 10: Law enforcement or public safety information provision may apply when an agency is conducting an investigation. For further information refer to: [Law enforcement and public safety](#).

<sup>1</sup> And chapter 3 of the *Information Privacy Act 2009* (Qld), to which this guideline also applies.

<sup>2</sup> References to agency in this guideline include a Minister.

<sup>3</sup> See for example *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016), *Castley-Wright and Mareeba Shire Council* [2018] QICmr 25 (22 May 2018), *Gapsa and Department of Transport and Main Roads* 6 September 2013 (311159), *Arthur and Council of the City of Gold Coast* [2017] QICmr 25 (13 July 2017).

<sup>4</sup> Please see the Annotated Legislation for schedule 3 for more information on exempt information provisions.



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If information does not fall within schedule 3, the agency will have to consider the factors listed in schedule 4 to decide if the information is contrary to the public interest to release.

### Public interest factors

Schedule 4 of the RTI Act lists public interest factors for and against disclosure. Decision makers must identify all relevant factors and balance them to decide if it would be contrary to the public interest to give access to documents. The public interest factors are non-exhaustive, allowing agencies to identify new public interest factors if required.

### Factors favouring disclosure

Factors favouring disclosure which commonly arise when processing applications for investigation or complaint documents include:

- information is the personal information of the applicant<sup>5</sup>
- enhancing the accountability of agencies<sup>6</sup>
- revealing background/contextual information to an agency decision<sup>7</sup>
- if the applicant was the subject of the complaint/investigation: administration of justice/procedural fairness<sup>8</sup>.

When deciding what weight to give the middle two factors the agency's actions, and any information given to the applicant, during the investigations will be relevant. For example, if the applicant was provided with information during the investigation process, was given procedural fairness, and had the agency decision explained to them, a decision maker might assign very little weight to those factors.<sup>9</sup> In relation to the last factor, it may not apply, or may no longer be relevant, where the agency takes no action on a complaint or discontinues compliance action against the applicant.<sup>10</sup>

Decision makers should consider relevant agency policies, and may want to speak to the business unit which conducted the investigation or dealt with the complaint, as part of making this decision.<sup>11</sup>

### Factors favouring non-disclosure

#### Personal information of people other than the applicant

Applicants will generally be given access to their own personal information (although there may be exceptions). Giving access to other people's personal information<sup>12</sup>, or to information that infringes someone's right to privacy<sup>13</sup>, may, on balance, be contrary

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<sup>5</sup> Schedule 4, part 2, item 7.

<sup>6</sup> Schedule 4, part 2, item 1.

<sup>7</sup> Schedule 4, part 2, item 11.

<sup>8</sup> Arising from the factors favouring disclosure in schedule 4, part 2, items 16 & 17.

<sup>9</sup> See, for example, *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 12 April 2013) (**Gapsa**) and *I69VLS and Sunshine Coast Regional Council* (Unreported, Queensland Information Commissioner, 3 September 2013).

<sup>10</sup> *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013)

<sup>11</sup> For example see: *Kelson and Queensland Police Service* [2017] QICmr 7 (3 March 2017)

<sup>12</sup> Schedule 4, part 3, item 3.

<sup>13</sup> Schedule 4, part 4, item 6.



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to the public interest depending on the factors favouring disclosure. This includes any information that would allow an applicant to work out the identity of someone who made a complaint. If the personal information of the applicant and the personal information of the other person cannot be separated then it may be necessary to refuse access to all the information.

### **Prejudice a management function<sup>14</sup>**

When a matter is investigated internally, agency staff involved in the workplace investigation generally provide information on the understanding that it will only be used for the investigation and any subsequent disciplinary action. It is reasonable to expect staff to cooperate with an investigative process and provide information; it is also reasonable to expect that disclosing this information could make staff reluctant to fully participate in, or to provide full and complete information to, future investigations<sup>15</sup>. Where releasing information would have this affect access may be refused where, on balance that release would be contrary to the public interest.<sup>16</sup>

### **Prejudice the flow of information**

Agency investigators rely on the free flow of information from witnesses and complainants. If giving access under the RTI Act to information they have provided would mean that, in the future, witnesses or complainants would be less likely to provide information<sup>17</sup> then access may be refused where, on balance that release would be contrary to the public interest.<sup>18</sup>

### **Unsubstantiated allegations and prejudice to fair treatment of individuals**

In some cases, the applicant will be a complainant seeking access to documents about the actions agency took in relation to their complaint. In these circumstances, decision makers will have to consider whether:

- the information consists of unsubstantiated allegations of wrongdoing; **and**
- disclosing the information could reasonably be expected to prejudice the fair treatment of individuals.<sup>19</sup>

If the information satisfies both of these points release may, on balance, be contrary to the public interest.<sup>20</sup>

### **Other public interest factors**

The RTI Act contains nineteen public interest factors favouring disclosure and thirty two favouring non-disclosure; these lists of factors are not exhaustive. It is always

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<sup>14</sup> This will generally only arise in relation to internal complaints and investigations.

<sup>15</sup> *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) (**Daw**).

<sup>16</sup> Schedule 4, part 3, item 19: In *Daw* the RTI Commissioner interpreted the meaning of *prejudice* in this context as having a detrimental effect on, or placing the agency at a disadvantage in relation to, its management function

<sup>17</sup> See, for example, *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011), *Suskova and Council of the City of Gold Coast* [2015] QICmr 31 (27 November 2015)

<sup>18</sup> Schedule 4, part 3, item 16; schedule 4, part 4, item 8; and schedule 4, part 3, item 13.

<sup>19</sup> Schedule 4, part 3, item 6.

<sup>20</sup> *Troiani and Queensland Police Service* (Unreported, Queensland Information Commissioner, 21 August 2012)



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open to an agency to identify other relevant public interest factors not listed in the RTI Act and apply them to an RTI application.<sup>21</sup>

For additional information and assistance please refer to [Applying for Workplace Investigation documents: a guide for applicants](#), [Applying for complaint documents: a guide for applicants](#), and the [Law enforcement and public safety](#) guideline 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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<sup>21</sup> See for example *Seven Network Operations and Redland City Council; Third Party* 30 June 2011 (310227)