



## Applying the legislation

GUIDELINE *Right to Information Act 2009*

### Agency documents held by third party legal providers

Under the *Right to Information Act 2009* (Qld)<sup>1</sup> (**RTI Act**), people have the right to apply for documents held by Queensland government agencies<sup>2</sup>. In some circumstances, this will include documents that are held by outside lawyers that have been engaged to provide legal services to the agency.

#### Documents held by legal practitioners

Agencies often engage outside lawyers to act on their behalf. In these circumstances, the agency is entitled to access *client documents* held by the lawyer it engaged.<sup>3</sup> Client documents will generally include:

- documents prepared by the lawyer for the client, or predominantly for the purposes of the client, for the purposes of the client's matter; and
- documents received by the lawyer from a third party in the course of the lawyer's retainer, for or on behalf of the client or for the purposes of a client's matter and intended for the use or information of the client.<sup>4</sup>

#### Outsourced legal work and RTI applications

If an agency receives an access application that captures documents held by outside lawyers—including another government agency, such as Crown Law—that the agency is entitled to access, the agency must retrieve those documents.

This is because a document of an agency<sup>5</sup> includes documents in the agency's legal control and documents that the agency is entitled to access. See [Documents of an agency and documents of a Minister](#) for more information.

#### Where another agency is providing the legal services

Where an agency (the second agency) is providing legal services to another agency (the first agency), the second agency will likely have a mix of client documents and non-client documents that relate to the legal services being provided. The first agency only has the right to access the client documents. The non-client documents belong

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<sup>1</sup> Access is also available under Chapter 3 of the *Information Privacy Act 2009* (Qld) (IP Act) and references to the RTI Act in this guideline should be read as including the IP Act.

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

<sup>3</sup> Section 14 of the *Australian Solicitors Conduct Rules (the Rules)* states that a lawyer's client is entitled to any client documents. This is the case even where the lawyer has acted for the client in the past but does not presently do so, even where a significant amount of time has passed.

<sup>4</sup> Guidance on which documents a client is entitled to access can be found in *Price v Nominal Defendant* 1999 QAR 80, applying the principles in *Wentworth v De Montfort & Ors* (1988) 15 NSWLR 348.

<sup>5</sup> And documents of a Minister.



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to the second agency and the first agency has no right to retrieve them, even if the scope of any access application they receive is broad enough to capture them.

In those circumstances, it may be appropriate for the first agency to consider a partial transfer of the application to the second agency under section 38 of the RTI Act. This will avoid delays to the applicant and ensure their entire application is progressed by the relevant agencies as quickly as possible.

### **Legal professional privilege**

Documents held by a third party legal provider are likely to be subject to legal professional privilege, which is a ground of exemption under the RTI Act<sup>6</sup>.

Decision makers may want to consider if refusal to deal under section 40 may apply to the part of the application that captures documents held by the third party lawyer. If so, there is no requirement to retrieve the documents. Refer to [Refusal to deal – all documents exempt](#) for more information.

Alternatively, decision makers may wish to discuss the likely refusal of access with the applicant to see if the applicant wishes to proceed with including those documents in the scope of their access application.

See [Legal professional privilege](#) 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](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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*Changes to legislation after the update date are not included in this document*

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<sup>6</sup> Schedule 3, section 7.