



Interpreting the legislation – *Right to Information Act 2009* and *Information Privacy Act 2009*

Processing access applications

1.0 Overview

Both the *Information Privacy Act 2009* (Qld) (**IP Act**) and the *Right to Information Act 2009* (Qld) (**RTI Act**) create a right of access to documents, subject to certain exclusions and exceptions. Applications for an applicant's personal information are generally to be processed under the IP Act; other applications are generally processed under the RTI Act.

This guideline provides a general overview of the steps to be followed when processing an access application and points decision makers to the relevant guidelines for each stage.

For amendment application, please refer to [Amendment Applications](#).

2.0 The application

2.1 Who can make decisions?

For applications to an agency, only the agency's principal officer or their delegate can make decisions on an access application. For applications to a Minister, only the Minister or a person directed by the Minister can make a decision on an access application.

Refer to [Who can make decisions under the RTI Act and the IP Act](#) and [Healthcare decisions](#) for more information.

2.2 Who can apply?

Anyone can apply for any documents under the RTI Act; any individual can apply for documents containing their personal information under the IP Act. An applicant can also authorise an agent, for example a lawyer, family member, or friend, to act on their behalf in making the application.

In addition, both the RTI and IP Acts specifically provide for access applications to be made by parents on behalf of their children—refer to [Applications by and for children](#) for more information.

2.3 What can an applicant apply for?

An applicant can only apply to access documents in the possession or control of an agency. Applications for information or for answers to questions may be valid if they can be interpreted as an application for documents containing those things.



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Refer to [Assessing the Terms of an Access Application](#) for more information.

There is no requirement that an applicant provide reasons for their application, however an applicant's reasons may be relevant when considering the public interest factors.

The application can only apply to documents that existed at the time the application was received or was made valid and applications will generally not apply to metadata or to agency backup systems.

Refer to [Documents of an agency and documents of a Minister](#) for more information.

2.4 Who can an applicant apply to?

Access applications under the RTI and IP Act can only be made to agencies and Ministers. A Minister includes an Assistant Minister; an agency includes a department, local government, and public authority, but does not include an entity to which the Acts do not apply.

Decision makers should consult the Guideline: [What is an agency?](#) for more information.

3.0 The RTI Act or the IP Act?

People can apply for documents under the RTI Act and the IP Act and the procedures under the Acts are essentially the same.

Under the IP Act an individual has a right to apply for any document that contains the individual's personal information—regardless of what else is contained in the document. There is no limitation on the documents that may be applied for under the RTI Act.

Refer to [Which Act applies](#) to determine if an application has been made under the correct Act.

If an application is made under one Act and it should have been made under the other, each Act has procedure to be followed. An agency cannot simply transfer it to the other Act. Refer to [Applications made under the wrong Act](#) for more information.

4.0 Requirements of a valid application

For an access application to be valid it must comply with the requirements set out in section 24 of the RTI Act or section 43 of the IP Act.

An access application must:

- be in the approved form (see www.rti.qld.gov.au for a copy of the approved form)



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- be accompanied by the application fee¹
- give sufficient information concerning the document to enable an officer of the agency to identify it
- state an address to which notices may be sent.²

For IP Act applications, or RTI applications involving personal information documents, the applicant must provide evidence of identity and, if an agent is acting for the applicant, the agent must provide evidence of identity and authority. Refer to [Evidence of identity of authority](#) for more information.

For RTI applications only, the applicant must state whether or not they are accessing the documents to benefit another entity (the beneficiary) and, if they are, identify the beneficiary.

An applicant must sufficiently describe the documents they are seeking so an agency officer can locate them and do so in a way that does not require the agency to decide what the applicant is applying for. Refer to [Assessing the Terms of an Access Application](#) for more information.

There are steps that must be followed when a noncompliant application is received. Refer to [Noncompliant applications](#) for more information.

5.0 Transferring applications

In some circumstances an agency will receive an application that they will need to transfer to another agency. The application can only be transferred to the other agency if:

- the application is valid
- the document to which the application relates is not held by the original agency but the original agency knows it is held by another agency; and
- the other agency consents.

As a matter of policy, agencies should only decline to accept transfers in extraordinary circumstances, for example, where an attempt to transfer the application is made near the end of the processing period.

If an application is transferred, it is taken to have been made to the agency to which it was transferred.

As a matter of good practice the original agency should advise the applicant:

- that the application has been transferred
- to which agency or agencies it has been transferred
- the date on which it was transferred.

For more information, refer to [Transferring access applications](#).

¹ Only for access applications under the RTI Act.

² This is not restricted to a physical address; an email address is sufficient.



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6.0 Refusal to Deal

In some circumstances an agency can refuse to deal with an application. These include where:

- the applicant has previously applied under the IP Act or RTI Act for the same documents and gives no reasonable basis for applying again
- dealing with the application would substantially and unreasonably divert the agency's resources or functions.

An agency can also refuse to deal with all or part of an application where it is expressed to relate to all documents of a stated class that contain information of a stated kind or relate to a stated subject matter and it appears that they will contain exempt information.

For more information, refer to [Refusal to deal](#) guidelines.

7.0 Neither confirm nor deny

Agencies may 'neither confirm nor deny' the existence of documents where acknowledging the existence of the documents could cause a detriment even if access is refused.

For example, the applicant applies for 'documents about the information Bob Smith gave to the police about me'. Refusing access to the documents would confirm that Bob Smith was the person who gave information about the applicant to the police, so the agency can respond to the application by neither confirming nor denying the existence of those documents.

Refer to the [Neither confirm nor deny](#) guidelines for more information or contact the Enquiries Service if you receive an application that you think neither confirm nor deny applies to, as they are handled differently from other applications—including not sending acknowledgement letters.

8.0 Timeframes for processing applications

Generally, an agency or a Minister has 25 business days to make a decision on an application. This is called the processing period. The 25 business day processing period begins on the first business day after a valid application is received, or a noncompliant application is made valid.

Certain periods are not counted when determining the processing period, including:

- if the application is transferred to the agency or Minister—the transfer period



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- if the application involves consultation with a relevant third party—10 business days.

At any time before the processing period ends the agency can ask the applicant for more time to deal with the application. This is called a further specified period and it should be requested as business days, rather than as an extension to a specific date. The further specified period does not count as part of the processing period and it begins when the processing period ends.

If a decision is not made within the time allowed by the Acts the agency is deemed to have refused access to the documents. This is called a deemed decision and can only be reviewed by the Information Commissioner on external review.

Refer to [How to calculate timeframes](#) for more information.

9.0 Charging for access applications

For access applications made under the RTI Act, there:

- is an application fee that cannot be waived
- may be a processing charge
- may be an access charge.

For IP applications there is no application fee or processing charge, but there may be an access charge.

For RTI applications, you cannot charge for documents that contain the applicant's personal information.

If the applicant is in financial hardship they can apply to have the processing and/or access charges waived.

Refer to [Fees and charges](#) for more information.

9.1 *RTI applications: Charges estimate notices and schedule of relevant documents*

For RTI Act applications only, the decision maker must give the applicant a charges estimate notice and a schedule of relevant documents before the end of the processing period.

The charges estimate notice should estimate the processing and access charges payable by the applicant. The applicant can either accept the charges, narrow the scope of their application to reduce the charges, or withdraw their application. If they narrow their application, or apply for financial hardship, the decision maker must give them a second charges estimate notice, which they can either accept or withdraw their application.

The final amount payable by the applicant may be less, but cannot be more, than the amount of the charges estimate notice accepted by the



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applicant. For more information refer to [Schedule of relevant documents and charges estimate notice](#).

10.0 Searching for documents

Searches should be done in all business units that will hold documents within the scope of the application. It is important to make written records of searches for the file. Refer to [Searching for documents](#) and [Online and on your phone: processing access applications for social media, webmail and text messages](#) for more information.

If searches return documents that are not in scope of the application, ie out of scope documents, they should not form part of the application or be mentioned in the decision notice. This is different from in scope documents that contain information that does not relate to the application, ie irrelevant information. Refer to [Deletion of Irrelevant Information](#) for more information.

11.0 Consultation with third parties

If a decision maker intends to give access to a document which contains information that could reasonably be expected to be of concern to a third party, they must consult with that third party.

Do not consult if the document will not be released.

Consultation gives the decision maker an extra ten days in which to give the applicant a decision notice.

If a document is released over a third-party's objections, they will have the same review rights as an applicant. Refer to [Consulting with a relevant third party](#) for more information.

12.0 Refusing access to documents

Section 47 of the RTI Act sets out the grounds on which access to documents can be refused in response to both an RTI Act and an IP Act application. These include where the documents are comprised of:

- exempt information
- contrary to the public interest information
- information contrary to a child's best interests
- healthcare information it would be contrary to an applicant's best interests to release.

It also provides that access may be refused where the documents are non-existent or unlocatable, or access is available through other means.

For more information refer to the following Guidelines:

- [Exempt information guidelines](#)
- [Public interest balancing test](#)
- [Decision making guidelines](#)



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- [Deletion of irrelevant information](#)

13.0 Notification of decision and reasons

RTI and IP Act decisions must be accompanied by prescribed written notices. Prescribed written notices must contain:

- the decision
- the reasons for the decision
- the day the decision was made
- the name and designation of the person making the decision
- any rights of review under the Act
- the procedures for exercising those rights; and
- the time within which an application for review must be made.

Refer to [Decision writing and Statements of Reasons](#) for more information and for additional requirements for specific decisions made under the RTI and IP Acts.

14.0 Giving access to documents

For guidance on providing access to documents, refer to [Providing access to documents](#).

For guidance on providing access to documents via the disclosure log after an access application made under the RTI Act, refer to the relevant [disclosure log guideline](#).

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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