



Interpreting the Legislation – *Right to Information Act 2009*

Exempt information

Information disclosure of which would be contempt of court or Parliament

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1.0 Overview

The *Right to Information Act 2009*¹ (Qld) (RTI Act) gives people the right to access documents in the possession or control of Queensland government agencies². This right of access is subject to some limitations. These limitations include information which is exempt from release under schedule 3 of the RTI Act.

2.0 Contempt of court or Parliament

Schedule 3, section 6 of the RTI Act provides that information is exempt information if its public disclosure (apart from disclosure under the RTI Act or any immunity of the Crown³) would be contempt of court or Parliament.

3.0 What is contempt of court?

Contempt of court is essentially an interference with the administration of justice.⁴ There are many situations that may result in a contempt of court, such as:

¹ And the *Information Privacy Act 2009* (Qld).

² And Ministers. References to agencies in this guideline include a Minister.

³ *Immunity of the Crown* is the presumption that a statute does not bind the Crown unless by express mention or necessary implication.

⁴ Australian Government Solicitor, Legal Briefing (Number 56) *Contempt of Court – How it can Effect You* (25 June 2000) <<http://www.ags.gov.au/publications/legal-briefing/br56.htm>>.



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- destroying documents likely to be needed for court proceedings
- an attempt to put improper pressure on a witness or juror
- disobeying a specific order of the court; or
- pre-judging the results of the proceedings.

Generally, under the RTI Act, the exemption will arise where disclosing the documents would contravene a court order, for example that documents not be released, or would be contempt by publication.

3.1 *General court orders*

Disclosing documents contrary to a court order is contempt of court. For example, if a magistrate ordered that relevant documents were only to be released to the parties involved in a court proceeding, disclosing the documents to any other party would be contempt of court. If the other party applied for the documents under the RTI Act, the exemption would apply.

3.2 *Contempt by publication (the 'sub judice' rule)*

Less commonly, it may be contempt of court to publish documents if they:

- relate to a pending or current legal proceeding; and
- the material could practically interfere with the due course of justice, for example, where publishing the documents could influence a witness or jury.

This is known as the 'sub judice' rule. If it applies, the documents will be exempt from release.

While it is difficult to set out rules for when the rule *will* apply, the Information Commissioner has made several observations⁵ about when it will not. For example:

- Where the information was disclosed to potential witnesses but it was so 'innocuous and uncontentious' that it could not influence them or disadvantage the applicant's case before the Supreme Court.⁶
- The third party review applicant raised issues of potential damaging negative media coverage if the information was

⁵ In addition to the decisions at listed at footnotes 7 and 8 also see: *Australian Leisure and Hospitality group Ltd and Department of Justice and Attorney General* (Unreported, Queensland Information Commissioner, 29 October 2012); *Independent Pub Group Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 29 October 2012); *Hill Mac Pty Ltd and Department of Justice and Attorney General* (Unreported, Queensland Information Commissioner, 29 October 2012) and *Deery Hotels Pty Limited and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 29 October 2012).

⁶ *Hendersen and Department of Education* (Unreported, Queensland Information Commissioner, 22 July 1997).



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released. The Commissioner found that the third party's forthcoming trial was to be held in the Magistrates Court, so it would be heard by a single Magistrate, sworn to hear all matters fairly and without bias, and not before a jury who might be influenced by media coverage.⁷

4.0 Contrary to an order made or direction given by certain bodies

Similar to court orders, information will be exempt if its public disclosure would be contrary to an order made or direction given by:

- a royal commission⁸
- a commission of inquiry; or
- a person or body having power to take evidence on oath.⁹

These bodies have the power to issue orders or directions prohibiting disclosure of the information if the publication of relevant material could prejudice an inquiry, or an individual's rights, interests or reputation (**non-publication order**).¹⁰

The information subject to the non-publication order would be exempt information.

5.0 Infringe the privileges of Parliament

Information is exempt if its public disclosure would infringe the privileges of Parliament.¹¹ This exempt information provision protects communications, debates, and proceedings made in the Assembly by members of the Queensland Parliament, or a Parliament of the Commonwealth, a State, or Norfolk Island.¹²

5.1 What is parliamentary privilege?

Parliamentary privilege exists to enable the Parliament, its committees, members and officers to proceed with their business without interference. It refers to the rights, powers and immunities which are essential to ensure that the Parliament operates effectively.¹³

⁷ *Sibelco Australia Ltd and Department of Natural Resources and Mines* (Unreported, Queensland Information Commissioner, 15 March 2013).

⁸ While a Royal Commission may only be established for a fixed time period, any confidentiality or non-publication orders continue in effect past this period (see Hartigan J in *Aldred and Department of Prime Minister and Cabinet* 20 ALD 27).

⁹ Schedule 3, section 6(b) of the RTI Act.

¹⁰ *Orth and Medical Board of Queensland* (2003) 6 QAR 209 at paragraph 101.

¹¹ Schedule 3, section 6(c)(i) of the RTI Act.

¹² Under schedule 3, section 6(c)(ii) and (iii) information is exempt information if its disclosure would infringe the privileges of the Parliament of the Commonwealth or a State, or a House of such a Parliament, or the Legislative Assembly of Norfolk Island.

¹³ As defined in the Queensland *Parliamentary Procedures Handbook*.



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5.2 When will disclosure be contempt of Parliament?

Disclosure of information will be contempt of Parliament when the information is:

- subject to Parliamentary privilege; and
- public disclosure would infringe the privileges of Parliament

The *Parliament of Queensland Act 2001* links Parliamentary privilege to proceedings in the Assembly, and defines those proceedings as including:

- evidence provided before the Assembly, committee or inquiry
- a document presented or submitted to the Assembly, committee or inquiry
- a document tabled in the Assembly, committee or inquiry³
- preparing a document for the purpose of presenting or submitting a document to or providing evidence before the Assembly, committee or inquiry; and
- preparing, making or publishing a document or report under the direction of the Assembly or a committee.

Note

The exemption can also apply to documents prepared specifically for use by a Minister for conducting business in the Assembly, even they are not actually used.¹⁴

5.2.1 Public disclosure of privileged material

Only Parliament has the authority to publicly disclose documents or information subject to Parliamentary privilege. While a *limited* disclosure of information may not be a breach of Parliamentary privilege¹⁵, there an agency has no ability to limit what an RTI applicant does with information released to them under the RTI Act.

For more information about the application of schedule 3, section 6(3)(c)(i) of the RTI Act and key decisions applying the exempt information provision, please refer to the [OIC Annotated Legislation](#).¹⁶

¹⁴ Moriarty and Department of Health (Unreported, Queensland Information Commissioner, 15 September 2010) at paragraph 10

¹⁵ Sharples and Queensland Police Service (Unreported, Queensland Information Commissioner, 7 December 2001) at paragraph 20

¹⁶ <http://www.oic.qld.gov.au/annotated-legislation/right-to-information/schedule-3-exempt-information/6-information-disclosure-of-which-would-be-contempt-of-court-or-parliament/section-63ci>. Please note, Schedule 3, section 6 of the RTI Act retains an exemption contained in section 50 of the repealed *Freedom of Information Act 1992* (repealed FOI Act) with no substantive alterations. The annotations to section 50 of the repealed FOI Act are therefore useful in applying Schedule 3, section 6 of the RTI Act.



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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.

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