



## Applying the legislation

GUIDELINE *Right to Information Act 2009*

### Managing access to digital video recordings

Digital video recording is increasingly being used as a tool by Queensland government agencies. If agencies create digital video recordings they have an obligation to take the steps necessary to ensure people are able to exercise their right of access under the *Information Privacy Act 2009* (Qld) (**IP Act**) and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>1</sup>

Digital video recordings are documents<sup>2</sup> within the meaning of the RTI Act<sup>3</sup> and include footage from closed circuit televisions (CCTV), body worn cameras, and other camera surveillance devices, including drones. This guideline will help agencies provide access to digital video recordings. For assistance in managing the privacy compliance aspect of digital video recordings refer to OIC's [Privacy compliance and CCTV](#)<sup>4</sup>, [Camera Surveillance and privacy](#)<sup>5</sup> and [Drones and the Privacy Principles](#)<sup>6</sup>.

#### Administrative access to digital video recordings

Formal applications under the RTI Act are intended to be a last resort. As such, agencies should provide access to documents administratively wherever possible.<sup>7</sup> However, agencies must also comply with the privacy principles, which only permit disclosure of personal information in specific circumstances. Whether or not administrative access to a digital video recording is appropriate will depend on the content of the footage (ie, does it contain personal information), the identity of the person requesting it, and the reason for the request.

#### Example

It is common for Police or other law enforcement agencies to seek access to camera footage as part of an investigation. Disclosure of personal information to a law enforcement agency where it is necessary for an investigation is permitted by the IP Act, which means providing the footage will not be a privacy breach. If you regularly receive requests from law enforcement for footage you should establish a set procedure for its release.<sup>8</sup>

<sup>1</sup> In this guideline, references to an agency include a Minister.

<sup>2</sup> Schedule 1 of the *Acts Interpretation Act 1954* (Qld).

<sup>3</sup> References to the RTI Act include a reference to Chapter 3 of the IP Act.

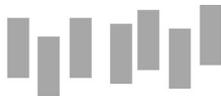
<sup>4</sup> Available on OIC's website: <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/privacy-compliance/privacy-compliance-and-cctv>.

<sup>5</sup> Available on OIC's website: [https://www.oic.qld.gov.au/data/assets/pdf\\_file/0006/7656/Camera-Surveillance-and-Privacy.pdf](https://www.oic.qld.gov.au/data/assets/pdf_file/0006/7656/Camera-Surveillance-and-Privacy.pdf).

<sup>6</sup> <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/applying-the-privacy-principles/drones-and-the-privacy-principles>

<sup>7</sup> Administrative access refers to the release of information by means other than a formal access application under the RTI or IP Acts.

<sup>8</sup> See [Camera Surveillance and Privacy](#) for more information on establishing a release procedure.



## Office of the Information Commissioner Queensland

If you have concerns about administratively releasing a digital video recording, tell the person they will need to make a formal access application. For more information about administrative access, see OIC's guideline: [Administrative release of information](#).<sup>9</sup>

### RTI applications for digital video recordings

Under the RTI Act, a person has the right to apply for access to most documents in the possession or control of a Queensland government agency. Access may be refused if it is, on balance, contrary to the public interest to release them.

#### Note: retention of recordings

The *Public Records Act 2002* governs when public records can be deleted. Digital video recordings should be managed in accordance with the relevant Retention and Disposal Schedule for your agency.

Because agency retention periods for digital video recordings are often short,<sup>10</sup> it is important to request a copy of the footage from the relevant business unit immediately after receiving an access application for digital video footage.

Once digital video recordings become subject to an access application, their retention period is extended.

### Refining the scope

When you receive an application for video footage it is important to talk to the applicant. You need to know how much of the footage they want, as thirty seconds will be easier to process than an hour's worth. Reducing the amount of footage may also significantly reduce the resources involved for your agency and the cost to the applicant. This is also an opportunity to find out why they need access and if they might be satisfied with something other than a copy of the footage.

### Post-application documents

In some situations, an applicant may be satisfied with screen captures (screencaps) taken from the footage.<sup>11</sup> Most video playing software will have an option to take a screencap which will be saved as an image file. Screencaps taken, for example, every second, can provide a clear indication of what happened in the footage.

These images can then be converted into a PDF document and any necessary information redacted using the standard method. This approach may be an alternative that is quicker, easier and less costly for the agency in

<sup>9</sup> Available on the OIC website: <https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/proactive-disclosure/administrative-release-of-information>.

<sup>10</sup> Once a document is requested under the RTI or IP Act it must be retained for an additional five years (above and beyond the minimum retention period) after the review processes have been finalised. See class 8.1.8 of the General Retention and Disposal Schedule for Administrative Records QDAN 249 v7.

<sup>11</sup> You can only proceed with this with the applicant's agreement.



## Office of the Information Commissioner Queensland

circumstances where it is suitable to the applicant. These screenshots will be post-application documents, so cannot be charged for, and the applicant will have no review rights in relation to them.

### **Deciding an access application for digital video footage**

Decision makers must make a decision about access to digital video footage in the same way they make a decision on any document applied for under the RTI Act. However, because of the nature of video recordings and the amount of information they capture, unique issues are likely to arise, as illustrated by the following case study.

#### **Case study: Hilda's Night Out**

Hilda was at a nightclub celebrating her friend's birthday. While leaving the nightclub, she was pushed by another patron and fell over, landing on Claudia's foot. Claudia and Hilda were then escorted out of the nightclub by the security guards. Once on the sidewalk, Claudia punched Hilda in the arm and a tussle followed. A crowd gathered and the tussle was shortly broken up by the nightclub's security guards.

Hilda made a complaint to the police, alleging that Claudia assaulted her. As part of its investigation, the police obtained the CCTV footage from the local council's City Safe cameras.

In addition to the criminal matter, Hilda is considering making a civil claim against Claudia. She applies to the Queensland Police Service for a copy of the footage of the incident so her lawyer can assess whether the claim is likely to succeed.

#### **Exempt information**

Schedule 3 of the RTI Act lists information which is exempt from release. If you decide that the information falls within one of the provisions in schedule 3, you can refuse access to it without any further public interest considerations.<sup>12</sup> In the case study, if the police investigation has not been finalised, disclosing the CCTV footage could prejudice the ongoing police investigation into the alleged assault committed by Claudia.<sup>13</sup> If so, it will likely be exempt from release.

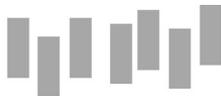
If the information is not exempt under schedule 3 of the RTI Act, you will have to consider the factors listed in schedule 4 to decide whether disclosing the information would, on balance, be contrary to the public interest.

#### **Public interest factors**

When making a decision about whether to give access to a document, you must balance the factors favouring disclosure against factors favouring non-disclosure. Public interest factors that may apply to the case study are discussed below.

<sup>12</sup> Please see schedule 3 of the OIC Annotated Legislation for more information on exempt information provisions.

<sup>13</sup> Schedule 3, section 10(1)(a) of the RTI Act.



## Office of the Information Commissioner Queensland

### ***Factors favouring disclosure***

The footage will contain the personal information of Claudia, who is the applicant, as she was captured by the cameras. This raises a factor favouring disclosure.<sup>14</sup> It is also possible that disclosure of the footage could reasonably be expected to (in relation to the police investigation):

- enhance government accountability;<sup>15</sup> and
- reveal background/contextual information to an agency decision<sup>16</sup>.

When applicants are seeking access to documents to assess or pursue a civil claim, administration of justice arguments are often raised.<sup>17</sup> For these factors favouring disclosure to arise, you must be satisfied that:

- the applicant has suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>18</sup>

In the case study, Claudia is seeking access to the CCTV footage so her lawyer can assess whether her civil law claim against Hilda is worth pursuing; as such, these factors arise.

### ***Factors favouring non-disclosure***

Giving access to other people's personal information,<sup>19</sup> or to information that infringes someone's right to privacy,<sup>20</sup> raises public interest factors favouring non-disclosure. For these factors favouring non-disclosure to arise, the video footage must contain a third party's personal information, ie the third party must be reasonably identifiable from the footage.<sup>21</sup> Being reasonably identifiable requires them to be identifiable by more than just close friends, workmates and family members or others who may possess specialist knowledge about the individuals.<sup>22</sup>

In the case study, the footage will contain the personal information of Hilda and may contain other individuals' personal information, depending on how clearly the other people are depicted in the footage. Footage which captures the images of both the applicant and other identifiable people can raise issues.<sup>23</sup>

<sup>14</sup> Schedule 4, part 2, item 7.

<sup>15</sup> Schedule 4, part 2, item 1.

<sup>16</sup> Schedule 4, part 2, item 11.

<sup>17</sup> Factors favouring disclosure, schedule 4, part 3, item 16 and 17 of the RTI Act.

<sup>18</sup> *Willsford and Brisbane City Council* (Unreported, Queensland Information Commissioner, 27 August 1996) at 17.

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

<sup>20</sup> Schedule 4, part 4, item 6.

<sup>21</sup> This could include a person's voice or identifying marks such as distinctive tattoos.

<sup>22</sup> *Seven Network (Operations) Limited and Logan City Council* [2018] QICmr 21 (11 May 2018)

<sup>23</sup> *Young and Queensland Police Service* (Unreported, Queensland Information Commissioner) 25 June 2013.



## Office of the Information Commissioner Queensland

---

If the personal information of the applicant and the personal information of the other people cannot be separated (e.g. through pixelation or another method of redacting individuals' faces from the footage), and it would be contrary to the public interest to release the personal information of the other people, it may be necessary to refuse access to the entirety of the footage.

Giving access to footage may also raise issues of prejudice to security, law enforcement or public safety<sup>24</sup>, which are public interest factors favouring non-disclosure. In the case study, it is arguable that disclosure of the footage could prejudice the police investigation into the alleged assault on Claudia.

### **Third party consultation**

If you are considering release of a digital video recording which contains information that may reasonably be of concern to a third party, you must take reasonably practicable steps to obtain their views before making a decision.<sup>25</sup>

The obligation to consult is limited to taking steps that are reasonably practicable. In the case study, third party consultation may be problematic as it might be practically difficult to consult with all the individuals who appear in the footage (patrons and staff of local nightclubs, security guards, passers-by, etc.).

For more information, see OIC's guideline: [Consulting with a relevant third party](#).<sup>26</sup>

### **Redaction of video footage**

The primary object of the RTI Act is to give a right of access to Queensland government information unless access is contrary to the public interest. Public interest assessment requires an appropriate consideration of individual privacy interests. Management of digital video must allow people to effectively exercise their access rights and allow decision makers to meet their privacy and pro-disclosure bias obligations. Agencies must therefore carefully consider the technology and training available to their decision-makers.

While redaction of information from video footage can be more time consuming than redaction of information from other documents, the capacity to redact information from video footage is an important part of ensuring effective access. Much like redacting information from, for example, PDF documents, it requires the appropriate software.

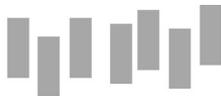
Depending on the complexity of the footage and the software being used, some level of automation may be available but decision makers will need to carefully check the final product to ensure all non-release information has been removed. The time required for redaction and reviewing needs to be considered

---

<sup>24</sup> Schedule 4, part 3, item 7 of the RTI Act.

<sup>25</sup> Section 37 of the RTI Act and section 56 of the IP Act.

<sup>26</sup> Available on the OIC website: <https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/consulting-with-a-relevant-third-party>



## Office of the Information Commissioner Queensland

when assessing initial applications and preparing the Charges Estimate Notices.

In some circumstances it may be beyond the resources of an agency to process an application for digital video recordings.<sup>27</sup> However as noted previously, clarifying what the applicant wants may reduce the amount of footage that must be processed and thus the resources involved.<sup>28</sup>

A number of video editing software suites allow video footage to be redacted, including one produced by Adobe, whose products are already used in redacting standard documents. There are a number of important factors when considering which software to use:

- does it *remove* information which is not to be released, rather than simply covering it up;<sup>29</sup> some forms of masking, such as swirling or blocking, can be reversed
- ease of use and availability of training courses and online tutorials
- the level of automation available, for example the ability to automatically detect faces and track them throughout the video; and
- ability to edit the audio track of the video footage.

Consult with your IT unit or provider in relation to any proposed purchase of software to ensure it is compatible with your systems.

### Existing facilities

It is not necessary for the RTI Unit to have its own video editing capacity if it can access necessary software in another part of the agency to redact audio and video footage.

### Redaction of audio footage

In some circumstances, you may decide it is contrary to the public interest to release the sound of someone's voice, for example if the person has a distinctive accent that would enable their identification or is suffering audible emotional distress.

The audio track of a video recording often contains *lexical information*—the actual words spoken by the individual—and *non-lexical information*—the tone and characters of those words. Where these constitute the personal information of those individuals, and/or would prejudice the protection of their right to privacy, it will be contrary to the public interest to release.<sup>30</sup>

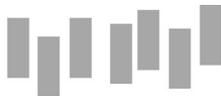
<sup>27</sup> See 'BZ' and Department of Immigration and Border Protection [2014] AICmr 55 (10 June 2014) where the Department submitted that pixilating the subject footage would be costly and onerous. The Information Commissioner did not accept this submission and decided it would be reasonably practical for the Department to grant the applicant an edited version of the footage.

<sup>28</sup> Discussions of this kind could form part of the consultation process after an agency has issued a notice of intention to refuse to deal because the application would be beyond the resources of the agency.

<sup>29</sup> As noted in the Department of Defence and Security's *Examination of the Functionality in Adobe Acrobat Pro*

<https://www.acsc.gov.au/publications/protect/Adobe-Acrobat-Redaction-Capability.pdf>

<sup>30</sup> *Nine Entertainment Co Holdings Ltd and Queensland Police Service* [2018] QICmr 54 (20 December 2018)



## Office of the Information Commissioner Queensland

Most video editing software has the ability to remove or alter the audio track of the video recording. If you alter the audio, you must ensure it cannot be reversed. For example simply speeding the audio track up is likely to be reversible as there are freely available tools which can be used to change the speed of an audio track.

### Quality of redaction

When redacting digital videos it is important to ensure you only remove information to which you have actually refused access. Be careful not to over-edit the footage.

#### Example

For some decisions, you may need to alter the audio track of a digital video recording to change the sound of someone's voice. For example, because you have decided that the sound of the audio track reveals emotions or other information, such as their identity, you have decided is contrary to the public interest to release. Their words, however, are not contrary to the public interest to release and you have decided to release them.

When editing video footage, take care not to obscure images you have decided should be released. For example, a decision that a person's identity should not be disclosed requires only information in the video footage that would identify the person to be redacted; all other information should be released to the applicant in accordance with the decision.

However, in some cases it may not be possible to keep a clear demarcation between information to be redacted and background information, for example, where the person in the video footage is moving.

### Outsourcing

In some circumstances, particularly where the digital video recording is complex or requires significant redaction, it may be beneficial to outsource the redaction to a professional.<sup>31</sup> Reasonable costs of having digital video footage professionally edited to redact exempt or contrary to the public interest information can be passed on to the RTI applicant, but must be included in the Charges Estimate Notice.

### Viewing or inspection

The RTI Act allows applicants to choose the way they want to access documents, eg by receiving a copy or by inspecting the document. When dealing with applications for video footage, allowing applicants to view, rather than receive a copy of, a digital video recording can—in some circumstances—

<sup>31</sup> Agencies will need to consider the provisions of Chapter 2, Part 4 of the IP Act. See <https://www.oic.qld.gov.au/guidelines/for-government/guidelines-privacy-principles/contracted-service-providers> for more details.



**Office of the Information Commissioner**  
Queensland

tip the balance on a decision that disclosure would be contrary to the public interest.<sup>32</sup>

This option will only be possible in very specific circumstances. It requires:

- the applicant to agree to seek access **only** by viewing the footage, because under the RTI Act the applicant chooses the form of access
- that the 'contrary to the public interest to disclose' decision was based primarily on non-disclosure factors relating to third parties' privacy interests; and
- the nature of the footage to be such that allowing the applicant to view it, rather than take a copy, would reduce the impact on the privacy interests of third parties sufficiently that it would no longer be contrary to the public interest to grant access.

**Example**

Where an applicant seeks access to a digital video recording in order to assess whether it would be valuable as evidence in a court process, providing them with 'inspect only' access would allow them to make the assessment in a way that lessened the impact on third party privacy interests. If the recording had value, it could then be provided to the court as part of the court process. Whether this is appropriate however, will depend on the particular circumstances and the content of the recording.

For additional information and assistance please refer to OIC's other 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).

*Published 18 June 2015 and last updated 5 February 2019*

*Changes to legislation after the update date are not included in this document*

<sup>32</sup> Allowing access by way of inspection only will ensure that in circumstances where copyright is an issue, it is not infringed. For more information about copyright, see OIC's guideline: [Providing access to documents](#).