
IPOLA GUIDELINE

Applying the legislation

GUIDELINE *Right to Information Act 2009*

Who does the RTI Act apply to

This guide does not reflect the current law.

It highlights important changes to the *Right to Information Act 2009* in a general way.

This guide is not legal advice and additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access the documents of an agency or Minister, and to amend their personal information contained in documents of an agency or Minister, subject to some exceptions and limitations.

Who is a Minister

The Governor, by commission, may appoint a person as a Minister of State, while the Governor in Council may appoint Assistant Ministers.¹ In the RTI Act a reference to a Minister includes an Assistant Minister.²

What is an agency

Section 14 of the RTI Act provides that an agency is a department, a local government, a public authority, a government owned corporation (GOC) or a GOC subsidiary.

If a body is established to help an agency, or perform functions connected with an agency, then it is considered to be part of that agency and not an agency in its own right. These bodies can include boards, councils, committees, subcommittees, and school councils.

Agency does not include the entities listed in schedule 2 of the RTI Act, which are either entirely excluded from the RTI Act, or excluded for specific functions. These include the Legislative Assembly, commissions of inquiry, Government Owned Corporations, and courts and tribunals in relation to their judicial or quasi-judicial

¹ See section 43 of the *Constitution of Queensland 2001* (**Constitution**) and section 33 of the *Acts Interpretation Act 1954* (Qld) regarding Ministers, and section 24 of the *Constitution* regarding Assistant Ministers.

² See definition of *Minister* in schedule 5 of the RTI Act.



functions. Refer to *Applications outside the scope of the Act* for more information.

Departments and local governments

Departments are public sector entities declared to be departments of Government under the *Public Sector Act 2002* (Qld).³

Local governments are:

- the Brisbane City Council established under the *City of Brisbane Act 2010* (Qld)
- a local government or joint local government established under the *Local Government Act 2009* (Qld); and
- the Wide Bay Water Corporation⁴.

Public authorities

Section 16 of the RTI Act lists the kinds of entities which are public authorities, including:

- entities established for a public purpose by an Act
- entities established by government under an Act for a public purpose (whether or not the public purpose is stated in the Act)
- an entity created by the Governor in Council or a Minister
- an entity declared to be a public authority under section 16A
- a rail government entity under the *Transport Infrastructure Act 1994*
- a person holding an office established under an Act; and
- a person holding an appointment made by the Governor in Council or Minister otherwise than under an Act and declared by regulation to be a public authority.

Established by an Act

The phrase '*established by an Act*' means that the Act in question needs to have *directly* provided for the entity's establishment.⁵

Established by government under an Act

The *Acts Interpretation Act 1954* (Qld) defines '*under*' for an Act or a provision of an Act to include by, for the purposes of, in accordance with, and within the meaning of.

It will often be necessary to consider the history of the entity to determine whether it was established by government or established by others (for example, a group of concerned citizens). 'Government' includes an agency, so an entity established by a department is established by government.

³ Orders of Governor in Council in which departments are declared may be accessed at www.qld.gov.au/about/how-government-works/government-responsibilities. Current department information may be accessed at www.qld.gov.au/about/how-government-works/government-structure.

⁴ See section 15 of the RTI Act.

⁵ *English and Queensland Law Society Inc. (1995) 2 QAR 714 (English)* at [69].



An entity can be established under more than one Act.⁶

A public purpose

The meaning of 'public purpose' is considered to be 'relatively straightforward'⁷ and means a purpose that is for the benefit of members of the community.⁸ The public purpose does not need to be specified in the establishing Act.⁹

When determining if an entity is established for a public purpose, it is relevant to consider the primary functions of the entity. An entity is likely established for a public purpose if:¹⁰

- it undertakes works that are ordinarily a government responsibility
- it involves a significant use of public monies; and
- the projects undertaken are intended to be for public use and to benefit members of the community.¹¹

Entities declared to be public authorities

An entity may be declared by regulation to be a public authority in relation to all or part of its functions.¹² The Minister may only recommend that Governor in Council make a regulation about certain kinds of entities, and only if the Minister decides it is in the public interest for the entity to be declared a public authority.¹³

GOCs

A GOC or its subsidiary is an agency under the RTI Act. Current GOCs are listed in schedule 1 of the *Government Owned Corporations Regulation 2014* (Qld).

Limitation of application to some GOCs

Schedule 2, part 2 of the RTI Act lists functions of entities to which the RTI Act does not apply. Several GOCs are included in this list. For these GOCs, the RTI Act only applies in relation to their community service obligations¹⁴. Community service obligations are listed in the *Government Owned Corporations Act 1993* (Qld) (**GOC Act**).

A GOC listed in schedule 2, part 2 of the RTI Act may not have any community service obligations. Any community service obligations a GOC is to perform must be included in the GOC's statement of corporate intent¹⁵ which is prepared each financial year.¹⁶

⁶ [Davis v City North Infrastructure Pty Ltd \[2011\] QSC 285](#) at [32].

⁷ Considering section 9(1)(a) of the repealed FOI Act in *English* at [74].

⁸ [McPhillimy and Gold Coast Motor Events Co. \(1996\) 3 QAR 376 \(McPhillimy\)](#) at [22].

⁹ [Price and Local Government Association of Queensland Inc. \(2000\) 5 QAR 417](#) at [19].

¹⁰ [Davis and City North Infrastructure Pty Ltd \(Unreported, Queensland Information Commissioner, 31 March 2010\) \(Davis\)](#) at [127]-[128].

¹¹ [McPhillimy](#) at [22]. This view was endorsed by the Information Commissioner in [Davis](#) at [28].

¹² Section 16A(1) and (4) of the RTI Act.

¹³ Section 16A(2) and (3) of the RTI Act.

¹⁴ Section 112 of the GOC Act.

¹⁵ Section 113(1) of the GOC Act.

¹⁶ Section 102 of the GOC Act.



For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

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