



## Interpreting the Legislation – *Right to Information Act 2009* and *Information Privacy Act 2009*

### Documents to which the RTI Act and IP Act do not apply

#### Schedule 1 of the RTI Act Sections 13 and 14 of the IP Act

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#### 1.0 Overview

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access documents of an agency unless, on balance, it is contrary to the public interest to give access.<sup>1</sup>

The RTI Act also provides that some documents are excluded from the operation of the RTI Act.<sup>2</sup> These are listed in schedule 1 and 2 of the RTI Act.

This guideline outlines the application of schedule 1 of the RTI Act. For information on schedule 2 and on dealing with an application for schedule 1 or 2 documents, refer to [Applications outside the scope of the Act](#).<sup>3</sup> These include RTI and IP Act processing documents.<sup>4</sup>

#### 2.0 Documents to which the RTI Act does not apply

Applications to access documents to which the RTI Act does not apply (as listed in schedule 1) are **not subject to** the RTI Act.<sup>5</sup> This means that an applicant has no right to formally apply for such documents.<sup>6</sup> Despite this, agencies<sup>7</sup> may release these documents, but must do so

<sup>1</sup> Section 3 of the RTI Act.

<sup>2</sup> They are also excluded from chapter 3 of the *Information Privacy Act 2009* (IP Act) – see sections 13 and 14 of the IP Act.

<sup>3</sup> <https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/receiving-and-assessing-applications/outside-scope-of-act/applications-outside-the-scope-of-the-act>

<sup>4</sup> See *T71 and Queensland Police Service* [2022] QICmr 10 (4 March 2022)

<sup>5</sup> Section 32 of the RTI Act.

<sup>6</sup> This is a reviewable decision. See the definition of 'reviewable decision' contained in schedule 5 of the RTI Act.

<sup>7</sup> In this Guideline references to agencies includes Ministers.



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through means other than the RTI Act, such as through administrative release schemes or where permitted or required by law.<sup>8</sup>

Schedule 1 lists specific types of documents to which the RTI Act does not apply, each of which is discussed below.

## 2.1 **Security document – schedule 1, section 1 of the RTI Act**

The RTI Act does not apply to documents, parts of documents or summaries of documents that originated with or were received from certain bodies dealing with security matters.<sup>9</sup>

Specifically, the RTI Act does not apply to:

*Either of the following documents –*

- (a) *a document (an **intelligence agency document**) that has originated with, or has been received from, any of the following entities –*
    - (i) *the Australian Secret Intelligence Service;*
    - (ii) *the Australian Security Intelligence Organisation;*
    - (iii) *the Inspector-General of Intelligence and Security;*
    - (iv) *the Office of National Assessments;*
    - (v) *the Defence Imagery and Geospatial Organisation;*
    - (vi) *the Defence Intelligence Organisation;*
    - (vii) *the Defence Signals Directorate;*
  - (b) *a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.*
- The Australian Secret Intelligence Service (**ASIS**) is Australia's overseas secret human intelligence collection agency. ASIS provides foreign intelligence services as directed by Government.<sup>10</sup>
  - The Australian Security Intelligence Organisation's (**ASIO**) main role is to gather information and produce intelligence to brief government about activities or events that may endanger Australia's national security.<sup>11</sup>

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<sup>8</sup> Section 4 of the RTI Act.

<sup>9</sup> Schedule 1, section 1 of the RTI Act.

<sup>10</sup> <http://www.asis.gov.au/About-Us/Overview.html>.

<sup>11</sup> ASIO Report to Parliament 2009-10, ix-x – see online at <http://www.asio.gov.au/img/files/ASIO-Annual-Report-to-Parliament-2009-10.pdf>.



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- The Inspector-General of Intelligence and Security (**IGIS**) inspects, inquires and reports on the activities of Australian intelligence and security agencies.<sup>12</sup>
- The Office of National Assessments (**ONA**) assesses and analyses international political, strategic and economic developments for the Prime Minister and senior ministers in the National Security Committee of Cabinet.<sup>13</sup> ONA draws on information available to the Australian government from all sources, both inside and outside of government.
- The Defence Imagery and Geospatial Organisation (**DIGO**) provides geospatial intelligence from imagery and other sources, in support of Australia's defence and national interests.<sup>14</sup>
- The Defence Intelligence Organisation (**DIO**) is responsible for assessing military intelligence, focusing on global security activity, terrorism, defence economics, military capabilities and science and technology that have military applications to ensure the defence of Australia and its interests.<sup>15</sup>
- The Defence Signals Directorate (**DSD**) collects and analyses foreign signals intelligence and provides advice and assistance on information and communications security.<sup>16</sup>

### 2.1.1 Applying schedule 1, section 1 of the RTI Act

Schedule 1, section 1 of the RTI Act only refers to documents that have **originated with, or have been received from**, any of the entities listed above. It does not include documents created by another entity and sent to one of the specified agencies. Therefore, if an agency subject to the RTI Act sent a letter to one of the listed entities, the file copy of the letter would be subject to the RTI Act, although any response would not.

The Information Commissioner has not made any decisions in relation to schedule 1, section 1 of the RTI Act or the equivalent provision under the repealed *Freedom of Information Act 1992* (Qld) (**repealed FOI Act**).<sup>17</sup>

## 2.2 Documents under Terrorism (Preventative Detention) Act 2005 – schedule 1, section 2 of the RTI Act

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<sup>12</sup> Inspector-General of Intelligence and Security Annual Report 2009-2010, 1.  
[http://www.igis.gov.au/annual\\_report/09-10/docs/IGIS\\_annual\\_report\\_09-10.pdf](http://www.igis.gov.au/annual_report/09-10/docs/IGIS_annual_report_09-10.pdf).

<sup>13</sup> <http://www.ona.gov.au/about-ona/overview.html>.

<sup>14</sup> <http://www.defence.gov.au/digo/about.htm>.

<sup>15</sup> <http://www.defence.gov.au/dio/about-us.shtml> and <http://www.defence.gov.au/dio/>.

<sup>16</sup> <http://www.dsd.gov.au/aboutdsd/index.htm>.

<sup>17</sup> Section 11(1)(j) was the equivalent provision in the repealed FOI Act.



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The RTI Act does not apply to a document created or received in carrying out activities under the *Terrorism (Preventative Detention) Act 2005* (Qld) (**TPD Act**).

The TPD Act allows a person to be taken into custody and detained in order to prevent an imminent terrorist act or to preserve evidence relating to a terrorist act.<sup>18</sup>

**2.3 Particular documents under Crime and Corruption Act 2001 – schedule 1, section 3 of the RTI Act**

The RTI Act does not apply to particular documents created under the *Crime and Corruption Act 2001* (Qld) (**CC Act**). In summary, this includes documents concerning:

- surveillance devices<sup>19</sup>
- controlled activities or operations for misconduct offences<sup>20</sup>
- assumed identities;<sup>21</sup> and
- covert search warrants, additional powers warrants and other warrants.<sup>22</sup>

Documents excluded from the RTI Act to the extent they comprise information under the CC Act are each discussed in further detail below.

**2.3.1 CC Act, chapter 3, part 6 division 2 or 3**

Chapter 3, part 6 of the CC Act deals with surveillance devices which are defined in schedule 2 of the CC Act to mean:

- (a) *for a crime investigation -*
  - (i) *a listening device; and*
  - (ii) *a visual surveillance device; and*
  - (iii) *a tracking device; and*
  - (iv) *a device containing any combination of the devices mentioned in subparagraph (i), (ii) and (iii); and*
  - (v) *a data surveillance device; and*
- (b) *for a corrupt conduct investigation – a listening device.*

**2.3.2 CC Act, chapter 3, part 6A**

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<sup>18</sup> Section 3 of the TPD Act.

<sup>19</sup> To the extent a document comprises such information or is a document under chapter 3, part 6, division 2 or 3 of the CC Act.

<sup>20</sup> To the extent a document comprises such information or is a document under chapter 3, part 6A of the CC Act.

<sup>21</sup> To the extent a document comprises such information or is a document under chapter 3, part 6B, divisions 2 to 7 of the CC Act.

<sup>22</sup> To the extent a document comprises such information or is a document under chapter 3, part 7 of the CC Act or chapter 3, part 8 of the CC Act or section 371 of the CC Act.



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Part 6A of the CC Act deals with controlled operations and controlled activities for corrupt conduct offences.

Corrupt conduct includes misconduct under the *Police Service Administration Act 1990* (Qld).<sup>23</sup>

A controlled operation is an operation to investigate corrupt conduct offences. Section 132 of the CC Act provides that permission may be granted for appropriate commission officers to engage in activities that may ordinarily be unlawful as part of the investigation of a suspected misconduct offence.

A controlled activity involves a single meeting between a police officer or commission officer and a police officer who is suspected of a corrupt conduct offence (**relevant officer**), where the true purpose of the communication is concealed from the relevant officer and where the commission officer or police officer engage in otherwise unlawful activity.<sup>24</sup>

### 2.3.3 CC Act, chapter 3, part 6B, divisions 2 – 7

Part 6B of the CC Act deals with assumed identities.

The purpose of part 6B is to facilitate investigations and intelligence gathering in relation to corrupt conduct offences.<sup>25</sup> This purpose is achieved by providing for the lawful acquisition and use of an assumed identity in relation to investigations and intelligence gathering of misconduct offences.<sup>26</sup>

Divisions 2 through 7 deal with issues such as the process for requesting and obtaining authority for the assumed identity;<sup>27</sup> the authority, creation and destruction of birth certificates and other evidence of assumed identity;<sup>28</sup> protections and indemnities from criminal responsibility;<sup>29</sup> reporting and record keeping.<sup>30</sup>

### 2.3.4 CC Act, chapter 3, part 7

Chapter 3, part 7 of the CC Act deals with covert search warrants for criminal investigations.

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<sup>23</sup> Schedule 2 of the CC Act.

<sup>24</sup> Section 146I of the CC Act.

<sup>25</sup> Section 146O of the CC Act.

<sup>26</sup> Section 146P of the CC Act.

<sup>27</sup> Part 6B, division 2 of the CC Act.

<sup>28</sup> Part 6B, division 3 subdivisions 1 and 2 of the CC Act.

<sup>29</sup> Part 6B, division 3, subdivision 3 of the CC Act.

<sup>30</sup> Part 6B, division 6 of the CC Act.



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2.3.5 CC Act, chapter 3, part 8

Chapter 3, part 8 of the CC Act provides additional powers (**additional powers warrants**) with a Court's approval. This part applies only for a misconduct investigation or a crime investigation relating to terrorism.

An authorised commission officer may apply to a Supreme Court Judge for a warrant authorising the use of powers under chapter 3, part 8 of the CC Act. The RTI Act does not apply to documents which relate to powers exercised under section 165 of the CC Act, including:

- the power to enter premises at which records of a financial entity or a suspected associate of a person being investigated are held and inspect, make copies or take extracts from the records so far as they relate to the affairs of the person being investigated;<sup>31</sup>
- the power to seize passports, travel documents, titles to property, securities and financial documents found in the possession or control of a person concerned in an investigation;<sup>32</sup>
- the power to require a person to give one or more sworn affidavits or statutory declarations relating to the property, financial transactions, money or assets of a person being investigated or their associate.<sup>33</sup>

2.3.6 CC Act, section 371

Section 371 of the CC Act deals with warrants issued under the repealed *Criminal Justice Act 1989* (Qld) or the repealed *Crime Commission Act 1997* (Qld).

A warrant issued under those repealed Acts is taken to be validly issued and in force under the CC Act.<sup>34</sup>

The RTI Act does not apply to any document concerning a warrant under the repealed *Criminal Justice Act 1989* (Qld) or the repealed *Crime Commission Act 1997* (Qld).

2.4 **Particular documents under Police Powers and Responsibilities Act 2000 – schedule 1, section 4 of the RTI Act**

The RTI Act does not apply to documents created under, or to the extent they comprise information about some activities under the *Police Powers and Responsibilities Act 2000* (Qld) (**PPR Act**) as outlined below:

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<sup>31</sup> Section 165(1)(a) of the CC Act.

<sup>32</sup> Section 165(1)(b) of the CC Act.

<sup>33</sup> Section 165(1)(c) of the CC Act.

<sup>34</sup> Section 371(1) of the CC Act.



### **Controlled Activities (*Chapter 10 of the PPR Act*)**

This chapter provides nominated police officers with legal authority to engage in activities that may otherwise be unlawful.<sup>35</sup> The nominated police officers will not be criminally or civilly liable for any acts or omissions during the period of the controlled activity.<sup>36</sup>

### **Controlled Operations (*Chapter 11 of the PPR Act*)**

This chapter concerns the process involved for obtaining authority for a police operation (**controlled operation**) which would otherwise amount to unlawful activity. Approval for a controlled operation must be sought from the chief executive officer of the relevant agency.<sup>37</sup> There are particular matters that must be taken into account in deciding the application for a controlled operation.<sup>38</sup>

Each formal application made for a controlled operation is required to be kept<sup>39</sup>, however such documents are not subject to the RTI Act.

### **Assumed Identities (*Chapter 12, parts 2 – 7 of the PPR Act*)**

These provisions enable a law enforcement agency to allow either a law enforcement officer or a civilian to acquire or use an assumed identity for the purposes of intelligence gathering or an investigation.

Applications must be in writing and include details such as the name of the person who will assume the identity, details of the proposed assumed identity, reasons for the need for the assumed identity, and details of the investigation or intelligence gathering exercise in which the assumed identity will be used.<sup>40</sup> Provision is also made for the creation of birth certificates for the purposes of assumed identities.<sup>41</sup>

Documents, to the extent they contain such information, are not subject to the RTI Act.

### **Surveillance Device Warrants (*Chapter 13 of the PPR Act*)**

This chapter establishes procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use,

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<sup>35</sup> Section 223 of the PPR Act.

<sup>36</sup> Section 225 of the PPR Act. Section 225(6) provides that there is no protection from criminal liability if the act or omission of the police officer engaged in the controlled activity results in the injury or death of a person or serious damage to property or serious loss of property.

<sup>37</sup> Section 239(1) of the PPR Act.

<sup>38</sup> Section 244 of the PPR Act.

<sup>39</sup> Section 270 of the PPR Act.

<sup>40</sup> Section 282 of the PPR Act.

<sup>41</sup> Section 288 of the PPR Act.



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maintenance and retrieval of surveillance devices in criminal investigations.<sup>42</sup>

**Blood and Urine Testing of Persons Suspected of Committing Sexual or Other Serious Assault Offences (*Chapter 18 of the PPR Act*)**

This chapter authorises the taking and analysis of blood and urine samples from a person a police officer reasonably suspects of having committed a relevant sexual or other serious assault offence.<sup>43</sup> The purpose of this chapter is to help ensure victims of particular sexual offences and serious assault offences and certain other persons receive appropriate medical, physical and psychological treatment.

Documents relating to such matters are not subject to the RTI Act if they would enable the identity of a person to whom a disease test has been ordered or a victim of a sexual or serious assault offence to be revealed.

**Register of Covert Acts (*Chapter 21, part 2, division 2 of the PPR Act*)**

The RTI Act does not apply to a document to the extent it comprises information kept in a register under chapter 21, part 2, division 2 of the PPR Act which relates to registers of covert acts. Schedule 6 of the PPR Act defines 'covert act' to mean:

- (a) *the making of a chapter 8, chapter 9, chapter 11 or chapter 13 application; or*
- (b) *the exercise of powers under this Act under –*
  - (i) *a monitoring order; or*
  - (ii) *a suspension order; or*
  - (iii) *a surveillance device warrant; or*
  - (iv) *a retrieval warrant; or*
  - (v) *a covert search warrant; or*
  - (vi) *an authorisation for a controlled operation; or*
- (c) *the disclosure of information to a declared agency.*

Chapter 8 of the PPR Act enables a police officer to apply to a Supreme Court Judge for an order directing a financial institution to give information to a police officer about a named person.<sup>44</sup>

Chapter 9 of the PPR Act concerns covert search warrants.<sup>45</sup>

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<sup>42</sup> Section 321 of the PPR Act.

<sup>43</sup> Section 538 of the PPR Act provides the list of relevant offences.

<sup>44</sup> Section 199 of the PPR Act concerns monitoring order applications and section 205 PPR Act concerns suspension order applications.



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Chapter 11 of the PPR Act concerns controlled operations.<sup>46</sup>

Chapter 13 of the PPR Act concerns surveillance device warrants.<sup>47</sup>

**2.5 Particular documents under Police Service Administration Act 1990 – schedule 1, section 5 of the RTI Act**

The RTI Act does not apply to a document created under part 5A of the *Police Service Administration Act 1990* (Qld). This part deals with alcohol and drug tests for members of the police service.

**2.6 Documents received or created by Integrity Commissioner for chapter 3 of the Integrity Act 2009 – schedule 1, section 6 of the RTI Act**

The RTI Act does not apply to a document created, or received, by the Queensland Integrity Commissioner for chapter 3 of the *Integrity Act 2009* (Qld).

Chapter 3 of the *Integrity Act 2009* (Qld) deals with the provision of advice on ethics or integrity issues by the Integrity Commissioner to prescribed designated persons. Designated person is defined to include all Members of the Legislative Assembly, statutory office holders, chief executives and senior executives of departments and public service offices and Ministerial office and Assistant Minister office staff.<sup>48</sup>

**2.7 Document received or created by Prostitution Licensing Authority – schedule 1, section 7 of the RTI Act**

The RTI Act does not apply to a document created, or received, by the Prostitution Licensing Authority for the *Prostitution Act 1999* (Qld). The *Prostitution Act 1999* (Qld) deals with such documents as brothel licences,<sup>49</sup> development approvals for brothels<sup>50</sup> and registers of licence holders.<sup>51</sup>

**2.8 Particular coronial document during investigation – schedule 1, section 8 of the RTI Act**

The RTI Act does not apply to a document of an agency that is a coronial document (other than a document given to, or accessed by the agency under section 25, 54 or 54A of the *Coroners Act 2003* (Qld)) while a coroner is investigating the death to which the document relates.

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<sup>45</sup> Section 212 of the PPR Act.

<sup>46</sup> Section 228 of the PPR Act.

<sup>47</sup> Section 321 of the PPR Act.

<sup>48</sup> Section 12 of the *Integrity Act 2009* (Qld).

<sup>49</sup> Part 3, division 1 of the *Prostitution Act 1999* (Qld).

<sup>50</sup> Part 4 of the *Prostitution Act 1999* (Qld).

<sup>51</sup> Part 7B, division 1 of the *Prostitution Act 1999* (Qld).



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Schedule 2 of the *Coroners Act 2003* (Qld) defines coronial document:

**Coronial document** means a document prepared for an investigation, other than a record, or a copy of a record, of an inquest made under the Recording of Evidence Act 1962.

Examples -

- an autopsy certificate, autopsy notice or autopsy report
- a report from a police officer helping a coroner about the investigation into a reportable death
- a record of the coroner's findings and comments.

Therefore, the RTI Act does not apply to coronial documents while a coroner is investigating a death to which the document relates *except* for documents under section 25, 54 and 54A of the *Coroner's Act 2003* (Qld).

Once a document is no longer related to a current coronial investigation, it will become subject to the RTI Act.<sup>52</sup>

## 2.9 **Root cause analysis document – schedule 1, section 9 of the RTI Act**

The RTI Act does not apply to a document created for a root cause analysis of a **reportable event** under:

- (a) the *Ambulance Service Act 1991* (Qld), part 4A, or
- (b) the *Hospital and Health Boards Act 2011*(Qld), part 6

### 2.9.1 **Reportable event under the *Ambulance Service Act 1991***

A *reportable event*, as defined by section 36A of the *Ambulance Service Act 1991* (Qld), includes for example, the following events which happen while an ambulance service is being provided to a person:<sup>53</sup>

- the death or permanent injury of a person suffered whilst giving birth
- the death of a person caused by the incorrect management of a person's medication
- the death of a person caused by the unreasonable delay in the provision of the ambulance service
- the death of a person caused by the wrong procedure being performed on a person
- the death of a person caused by a procedure being performed on the wrong part of the person's body.

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<sup>52</sup> For further information about coronial documents which are always subject to the RTI Act, refer to sections 25, 54 and 54A of the *Coroners Act 2003* (Qld).

<sup>53</sup> For the full list of reportable events see section 36A of the *Ambulance Service Act 1991* (Qld).



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**2.9.2 Reportable event under the Hospital and Health Boards Act 2011**

A *reportable event* as defined by section 94 and 95 of the *Hospital and Health Boards Act 2011 (Qld)* means an event prescribed under a regulation that happens while a health service is being provided at a health service facility. Section 29 of the *Hospital and Health Boards Regulation 2012 (Qld)* provides a definition for reportable event for the purposes of the *Hospital and Health Boards Act 2011 (Qld)* which includes, for example:<sup>54</sup>

- the death or serious maternal morbidity associated with labour or delivery
- the death of a person associated with the incorrect administration of the person's medication
- the death or permanent injury of a person as a result of the wrong procedure being performed
- the retention of an instrument or other material in a person's body during surgery that requires further surgery to remedy the retention
- the death or permanent injury of a person as a result of a blood transfusion reaction resulting from the wrong blood type being used
- the suspected suicide of a person receiving inpatient health care
- the suspected suicide of a person with a mental illness who is under the care of a provider of mental health services while residing in the community
- any other death or injury of a person that was not reasonably expected to be an outcome of the health service provided to the person.

**2.9.3 What is 'root cause analysis'?**

*Root cause analysis* of a reportable event means a systematic process of analysis where factors that contributed to the reportable event may be identified and remedial measures to prevent recurrence may be identified.<sup>55</sup> The definition does not include investigating professional competence or determining blame for the event.<sup>56</sup>

**2.10 Particular documents under Workers' Compensation and Rehabilitation Act 2003 – schedule 1, section 10 of the RTI Act**

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<sup>54</sup> For the full list of reportable events see section 29 of the Hospital and Health Boards Regulation 2012 (Qld)

<sup>55</sup> Section 36B(1) of the *Ambulance Service Act 1991 (Qld)* and section 95(1) of the *Hospital and Health Boards Act 2011 (Qld)*

<sup>56</sup> Section 36B of the *Ambulance Service Act 1991 (Qld)* and section 95(2) of the *Hospital and Health Boards Act 2011 (Qld)*



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The RTI Act does not apply to a document created, or received by, the Workers' Compensation Regulatory in carrying out its function of monitoring the financial performance of self-insurers.<sup>57</sup>

**Self-insurer** is defined in schedule 6 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) as a single employer or group employer licensed under chapter 2, part 4. This provision allows licensed insurers to provide their own accident insurance for their workers, instead of insuring with WorkCover Queensland (**WorkCover**).<sup>58</sup>

Schedule 3, section 10 of the RTI Act also provides that the RTI Act does not apply to a document created, or received, by WorkCover in carrying out its commercial activities about policies, applications for compensation, or proceedings for damages.<sup>59</sup>

This part re-enacts the effect of the repealed sections 475(2) and (3)(a) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) which provided that the repealed FOI Act did not apply to the specified types of documents. Decisions in relation to those sections may be persuasive in applying the schedule 1, section 10(b) provision as there are not yet any relevant decisions under the RTI Act.

#### Example

In *Cumpston and WorkCover Queensland*,<sup>60</sup> the applicant sought access to a report of WorkCover's outstanding claims under the repealed FOI Act.

WorkCover refused access to the report on the basis that it was sourced and brought into existence in the course of WorkCover's "commercial activities"<sup>61</sup> and therefore the FOI Act had no application to the report.

On external review, in order to determine whether the report was received or brought into existence by WorkCover in carrying out its commercial activities, the Assistant Commissioner considered the content of the report, having regard to:

- a) the purpose of the report; and
- b) whether the report was prepared pursuant to any statutory reporting obligations.<sup>62</sup>

<sup>57</sup> Schedule 1, section 10(a) of the RTI Act. This provision re-enacts the effect of the repealed section 379(2) of the *Workers Compensation and Rehabilitation Act 2003* (Qld) which provided that the FOI Act did not apply to these documents. Section 379(2) of the *Workers Compensation and Rehabilitation Act 2003* (Qld) was repealed by the now also repealed schedule 5 of the RTI Act.

<sup>58</sup> Section 68 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

<sup>59</sup> Schedule 1, section 10(b) of the RTI Act.

<sup>60</sup> Unreported, Queensland Information Commissioner, 31 August 2006

<sup>61</sup> Pursuant to section 475 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

<sup>62</sup> *Cumpston and WorkCover Qld* at paragraph 8.3.



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The Assistant Commissioner considered that the purpose of the report was to inform the Board and aid WorkCover in:

- analysing claim patterns and future trends
- developing internal claims management policies
- determining premium costs.

The Assistant Commissioner was also satisfied that the report was not prepared pursuant to any statutory reporting obligations. The Assistant Commissioner affirmed the decision to refuse access to the document on the basis that the report was prepared in the course of WorkCover's "commercial activities" and was therefore excluded from the application of the FOI Act.

**2.11 Particular documents under Biodiscovery Act 2004 – schedule 1, section 11 of the RTI Act**

The RTI Act does not apply to any of the following documents under the *Biodiscovery Act 2004* (Qld) –

- (a) a benefit sharing agreement;
- (b) a record kept by a department about a benefit sharing agreement or proposed benefit sharing agreement;
- (c) a subsequent use agreement;
- (d) a record kept by a department about a subsequent use agreement;
- (e) a record kept by a department about a collection authority;
- (f) a document identifying a person who gave a sample of native biological material to a receiving entity under section 30 of that Act.

The *Biodiscovery Act 2004* (Qld) was implemented to regulate the collection and commercial use of native biological material, and to ensure Queensland benefits from its use.<sup>63</sup>

"Biodiscovery" is defined as biodiscovery research, (being the analysis of molecular, biochemical or genetic information about native biological material for the purpose of commercialising the material) or the commercialisation of native biological material of a product of biodiscovery research.<sup>64</sup>

<sup>63</sup> Nicholas Loos and Christopher Peters, "Queensland's Innovative Biodiscovery Legislation", (2005) 33 *Australian Business Law Review* 146.

<sup>64</sup> As defined in the Schedule to the *Biodiscovery Act 2004* (Qld) and Nicholas Loos and Christopher Peters, "Queensland's Innovative Biodiscovery Legislation", (2005) 33 *Australian Business Law Review* 146.



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A benefit sharing agreement is defined in section 33 of the *Biodiscovery Act 2004* (Qld) as being where the DSDI Minister<sup>65</sup> enters into an agreement with a biodiscovery entity under which the State gives the entity the right to use native biological material for biodiscovery and the entity agrees to provide benefits of biodiscovery to the State.

Under 206D of the RTI Act, these documents continue to be documents to which the RTI does not apply:<sup>66</sup>

- a biodiscovery plan;
- a record kept by a department about a biodiscovery plan;
- a document identifying the holder of a collection authority under which a sample of native biological material was given to a receiving entity.

**2.12 Particular documents under Gene Technology Act 2001 – schedule 1, section 12 of the RTI Act**

The RTI Act does not apply to a document to the extent it comprises confidential commercial information within the meaning of the *Gene Technology Act 2001* (Qld).

Information may be declared “confidential commercial information” under the *Gene Technology Act 2001* (Qld) if it is:

- a trade secret
- information that has a commercial or other value that would or could reasonably be expected to be, destroyed or diminished if the information were disclosed, or
- other information that concerns commercial or financial affairs of a person, organisation or undertaking which, if disclosed, could unreasonably affect the person, organisation or undertaking.<sup>67</sup>

The regulator must declare that the information is confidential commercial information for the purposes of the Act. However, it may refuse to declare information as confidential commercial information if

<sup>65</sup> The Schedule to the *Biodiscovery Act 2004* (Qld) defines “DSDI Minister” to mean the Minister responsible for administering the *Gene Technology Act 2001* (Qld).

<sup>66</sup> The RTI Act was amended to remove these documents from schedule 1, section 11 of the RTI Act by the *Biodiversity and Other Legislation Amendment Act 2020* on 20 August 2020, however it also inserted section 206D into the RTI Act which provides that, even if created or amended after 20 August 2020, documents of the type mentioned in the former schedule 1, section 11 continue to be documents to which the RTI Act does not apply.

<sup>67</sup> Section 185(1) of the *Gene Technology Act 2001* (Qld).



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satisfied that the public interest in disclosure outweighs the prejudice the disclosure would cause to any person.<sup>68</sup>

**2.13 Particular documents under Sugar Industry Act 1999 – schedule 1, section 13 of the RTI Act**

The RTI Act does not apply to:

*Either of the following documents –*

- (a) *A document in connection with any of the following matters under the Sugar Industry Act 1999 that was held by the Sugar Authority on or after 1 July 2004 and before 1 January 2006;*
  - (i) *the giving of a periodic estimate;*
  - (ii) *the making or granting of an application for an exemption;*
  - (iii) *the giving of an annual return;*
  
- (b) *A document in connection with either of the following matters under the Sugar Industry Act 1999 that was given to the Sugar Industry Commissioner on or after 1 January 2006 and before 1 July 2008 –*
  - (i) *the making or granting of an applicant for an exemption;*
  - (ii) *the giving of an annual return.*

The purpose of the *Sugar Industry Act 1999* (Qld) is to facilitate an internationally competitive, export oriented sugar industry based on sustainable production that benefits those involved in the industry and the wider community.<sup>69</sup> The sugar industry has been through a range of legislative changes since 1991 and has had various representative and overseeing bodies.<sup>70</sup> However, only the documents for the purposes and dates listed above are not subject to the RTI Act.

**2.14 Particular GOC documents created or received before commencement – schedule 1, section 14 of the RTI Act**

The RTI Act does not apply to a document received or brought into existence by government owned corporations (**GOCs**) prior to the commencement of the RTI Act and to which the repealed FOI Act did not apply.

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<sup>68</sup> Section 185(2) of the *Gene Technology Act 2001* (Qld).

<sup>69</sup> Section 3 of the *Sugar Industry Act 1999* (Qld).

<sup>70</sup> See the Department of Employment Economic Development and Innovation website for further information about the changes to the sugar industry legislation since 1991: <http://www.daff.qld.gov.au/plants/field-crops-and-pastures/sugar/changes-to-sugar-industry-legislation> .



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The repealed FOI Act provided that the Act did not apply to documents received, or brought into existence, in carrying out specified activities of a GOC.<sup>71</sup> These activities had to be of a kind mentioned in schedule 2 and they were excluded to the extent provided for in schedule 2.

Schedule 2 of the repealed FOI Act referred to the following GOCs in relation to the relevant corresponding documents:

- QR Limited, or a port authority (within the meaning of the *Transport Infrastructure Act 1994* (Qld)) that is a GOC in relation to the functions outlined in section 486 of the *Transport Infrastructure Act 1994* (Qld).
  - The now amended section 486(1) of the *Transport Infrastructure Act 1994* (Qld) provided that the FOI Act did not apply to a document received or brought into existence by a transport GOC in carrying out its excluded activities.
- Queensland Investment Corporation.
  - The now amended section 37(3) of the *Queensland Investment Corporation Act 1991* (Qld) provided that the FOI Act did not apply to a document received or brought into existence by the Corporation in carrying out its excluded activities.
- State electricity entity, within the meaning of the *Electricity Act 1994* (Qld).
  - The now amended section 256(3) provided that the FOI Act did not apply to a document received or brought into existence by a State electricity entity in carrying out its excluded activities.
  - Electricity entity is an entity that is a participant in the electrical industry.<sup>72</sup>
- The GOC that was the commercialised business unit known as State Water Projects in the Department of Natural Resources.
  - The now amended section 998 of the *Water Act 2000* (Qld) provided that the FOI Act did not apply.
- Golden Casket Lottery Corporation Limited.
  - The now amended section 225A of the *Lotteries Act 1997* (Qld) provided that the FOI Act did not apply to a document received or brought into existence by the Golden Casket Lottery Corporation Limited in carrying out its excluded activities before the commencement of section 228D.

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<sup>71</sup> Section 11A.

<sup>72</sup> Section 22(1) of the *Electricity Act 1994* (Qld).



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In the context of the provisions discussed above, 'excluded activities' means commercial activities or community service obligations prescribed under the relevant regulation.<sup>73</sup>

**2.15 Particular corporatised corporation documents created or received before commencement – schedule 1, section 15 of the RTI Act**

The RTI Act does not apply to a document created or received prior to the commencement of the RTI Act<sup>74</sup> to which the repealed FOI Act did not apply under section 11B of that Act.

Section 11B of the repealed FOI Act provided that the FOI Act did not apply to documents received or brought into existence by local government corporatised corporations (**LGOC**) in carrying out a corporatised corporation's activities to the extent provided under section 1205 of the repealed *Local Government Act 1993* (Qld) (**repealed LG Act**). Section 1205 of the repealed LG Act provided that the FOI Act did not apply to a document received or brought into existence by a corporatised corporation in carrying out its excluded activities.

A corporatised corporation means an LGOC or subsidiary of a LGOC.<sup>75</sup> An excluded activity means commercial activities or community service obligations prescribed under a regulation.<sup>76</sup>

**2.16 Particular documents relating to judicial appointments – schedule 1, section 16 of the RTI Act**

The RTI Act does not apply to documents received by or for the Attorney-General, the justice department or a judicial appointments adviser that expresses a person's interest in being considered for judicial appointment in Queensland. It also does not apply to documents created or received by or for the Attorney-General, the justice department or a judicial appointment adviser for the purpose of:

- consulting on or nominating candidates for judicial appointments in Queensland; or
- otherwise carrying out a function under a judicial appointments protocol.

*Judicial appointments adviser* means an entity that has a function under a judicial appointments protocol of:

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<sup>73</sup> Section 486(4) of the *Transport Infrastructure Act 1994* (Qld), section 37(1) of the *Queensland Investment Corporation Act 1991* (Qld), section 256 of the *Electricity Act 1994* (Qld), section 998(3) of the *Water Act 2000* (Qld), section 225A(3) of the *Lotteries Act 1997* (Qld).

<sup>74</sup> 1 July 2009.

<sup>75</sup> Section 592 of the repealed LG Act. This provision also provides that an LGOC means a significant business entity declared to be a local government's LGOC by resolution of the local government that has taken effect.

<sup>76</sup> Section 1205(5) of the repealed LG Act.



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- considering expressions of interest for judicial appointment in Queensland; and
- preparing and presenting to the Attorney-General a list of candidates who are suitable for judicial appointment in Queensland.

*Judicial appointments protocol* means a protocol establishing a process for considering, consulting on or recommending candidates for judicial appointments in Queensland.

*Justice department* means the department in which the *Attorney-General Act 1999* is administered.

**Note**

Schedule 1, section 16 applies in relation to documents created or received on or after 15 July 2016 and a document to which this section applies is taken to have always been a document to which this Act does not apply.

For additional information and assistance please refer to the OIC 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.**

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