



Information Sheet

Right to Information Act 2009 and Information Privacy Act 2009

Applying for workplace investigation documents

This information sheet is intended to assist people who have been involved in a workplace investigation and are applying to access documents about that investigation. It does **not** apply to documents which relate to a Crime and Corruption investigation¹ or a non-workplace complaint².

Can I apply for the documents?

The *Right to Information Act 2009 (RTI Act)* and the *Information Privacy Act 2009 (IP Act)* give people the right to apply to Queensland government agencies for access to documents.

Will I get access to the documents?

You will probably not get access to everything you apply for.

The reason you may be refused access to some documents is because they will contain information that is 'contrary to the public interest' to release. For example, other people's personal information, such as their witness statements, will generally be contrary to the public interest. However, you will likely get access to documents that contain only information about you and to procedural documents.

What is the public interest?

The public interest refers to considerations affecting the good order and functioning of the community and government for the well-being of the public. The notion of the public interest is usually treated as separate from matters of purely private or personal interest.

Why is something 'contrary to the public interest' to disclose?

The RTI Act contains lists of public interest factors, some favouring disclosing information and some favouring *not* disclosing information. When making a decision about whether or not to release a document, the decision maker will identify all relevant factors for and against disclosure and weigh them up. If the factors against disclosure outweigh the factors for disclosure, access will be refused because disclosure would, on balance, be contrary to the public interest to disclose.

For more information, refer to: [What is the public interest.](#)

¹ For CCC investigation documents see the CCC Information Sheet at <http://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment>

² Please refer to the information sheet on applying for complaint documents available here <http://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment>



What if I have a good reason for wanting the information?

You do not have to give reasons for wanting to access the documents you are applying for. However, if you need the information for a purpose that raises factors favouring disclosure—for example, you want the documents to assist you in starting a legal claim for damages—telling the agency could assist them in making its decision.

What information will generally be contrary to the public interest to disclose?

Personal information of other people

The personal information of other people, such as their observations, opinions, complaints or recollections, or information which infringes their right to privacy has been found to be contrary to the public interest. You may be refused access to this sort of information.

In some circumstances it will not be possible to separate your personal information from other people's personal information. An example of this may be a witness statement containing the thoughts and feelings of another person about an incident or situation you were involved in. If it is not possible to separate personal information, access to all of the personal information—yours and the other people's—may be refused.

Information which could prejudice a management function

Giving access to information which could have a negative impact on the management of staff has regularly been found to be contrary to the public interest. If giving access would tend to result in staff being less forthcoming in future investigations it will have a negative impact on staff management.

Staff usually supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action. It is reasonable to expect staff to cooperate with an investigative process. However, if disclosing the information under the RTI Act could make staff reluctant to fully participate in, or to provide full and complete information to, future investigations, you are likely to be refused access to information that staff have provided.

Prejudice the flow of information

It has been previously decided that releasing information that could prejudice the flow of confidential information to government is contrary to the public interest. For example, where witnesses understand that the information they provide to investigators will be held in confidence and they would be less likely to provide that information in the future if it is released, that sort of information may not be disclosed.



Office of the Information Commissioner
Queensland

What about accountability in conducting investigations?

There will often be a broad public interest in the agency being accountable to the public for its actions. It is necessary, however, for the facts in each case to be considered to decide whether the interest in accountability is:

- favoured by disclosing the information in question
- strong enough to outweigh the specific factors against disclosure.

In most cases, the broad general interest in accountability has not been found sufficient to outweigh the above factors against disclosure.

Natural Justice/Procedural Fairness

Individuals involved in disciplinary proceedings are entitled to procedural fairness. Agencies are required to notify employees who are subject to disciplinary proceedings of the allegations against them and give them an opportunity to respond. They are also required to advise them of the outcome of those proceedings.³ These actions will generally discharge any obligation of procedural fairness.

The RTI process is separate from any workplace investigation process, however in some limited circumstances, giving access to information through RTI may help to ensure an individual receives procedural fairness. This can generally be met without giving access to every document related to the investigation. Procedural fairness requirements will rarely, if ever, be advanced by providing a copy of the witness statements or the actual complaint.

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

This information sheet 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.

Published 27 July 2013 and Last Updated 17 December 2018

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

³ See the Public Service Commission's *Chief Executive Guideline 01/13: Discipline* and the *Public Service Act 2008* (Qld), chapter 6.