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## IPOLA GUIDELINE

### Applying the legislation

#### GUIDELINE - Right to Information Act 2009 Managing noncompliant applications

**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 documents of an agency<sup>1</sup> and to amend their personal information contained in documents of an agency, subject to some exceptions and limitations.

Applications which meet all relevant application requirements will be processed. If an agency receives a noncompliant application, it must give the applicant an opportunity to rectify the noncompliance. If they fail to do so, and the agency decides the application is noncompliant, then the agency must give the applicant a decision notice explaining that the application is noncompliant.

Although the RTI Act does not stipulate the timeframe in which an agency or Minister must make a decision that an application is noncompliant, application of section 38(4) of the *Acts Interpretation Act 1954* (Qld) ‘creates a strict time’<sup>2</sup> to undertake that step, that is, as soon as possible. The agency is allowed an additional 10 business days to then give written notice of the decision to the applicant.

#### The processing period and noncompliant applications

The processing period is the time a decision maker has to give the applicant a decision. It runs from the *valid application day*, defined in section 18(4), which is the day the application complies with all relevant application requirements.

If the application is compliant when it arrives, the processing period starts on the next business day. If it's noncompliant when it arrives, the processing period starts on the business day after it's made compliant.

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

<sup>2</sup> *Niclin Constructions Pty Ltd v SHA Premier Constructions Pty Ltd* (2019) 2 QR 190 at [34] (Applegarth J).

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For more information refer to *Timeframes under the RTI Act*.

### **Application includes documents outside the RTI Act**

If an application includes some documents that the RTI Act doesn't apply to, the decision maker can make a decision that they are outside the scope of the Act under section 32 or 78J and continue dealing with the rest of the application.

As discussed above, if the rest of the application is noncompliant, the decision maker should keep two timeframes in mind: the section 32 or 78J decision must be given within 25 business days from the date of receipt; while the decision about the rest of the application must be given within 25 business days from the date the rest of the application is made compliant.

For more information, refer to *Applications outside the scope of the Act*.

### **When is an application compliant?**

Section 24 and 78 of the RTI Act list the requirements for compliant access and amendment applications.

#### **Application must be in writing**

Access and amendment applications must be made in writing. There is no requirement that they be made on the approved form, or a form developed by the agency.

#### **Access only - accompanied by the application fee**

There is no application fee for amendment applications. An application fee is only payable for access applications if they include one or more documents that do not contain the applicant's personal information.

Generally, if payment accompanies the application, the application will be compliant when it is received by the agency (presuming all other application requirements are satisfied), regardless of how long the agency takes to process the payment.

If there is a form of payment the agency cannot process, has made a policy decision not to accept, or can only accept in a specific way, the application will not be compliant when accompanied by that form of payment. Applicants should be advised of the payment issues as quickly as possible. It would be best practice to include any payment limitations on the agency's website.

#### **Evidence of identity and authority**

Evidence of identity must be provided for all amendment applications and any access applications which include documents containing the applicant's personal information.

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information. Authority requirements vary based on the relationship between applicant and agent.

Refer to [Evidence of Identity and Authority](#) for more information.

If an access application does not include any documents containing the applicant's personal information, evidence of identity and authority is not required.

### **Sufficient information about the documents**

Applicants must describe the documents they want to access or amend with enough specificity that the agency can identify the documents being applied for, conduct searches for the documents; and make decisions on the documents.

The size of the agency and the way documents are stored and filed (e.g., centrally versus regionally) will be relevant when making this determination.

Refer to [Assessing the Terms of an Access Application](#) for more information.

### **Amendment only – previous access to the documents**

An applicant can only apply to amend personal information in a document they have previously accessed. This does not need to be access under the RTI Act and can include access obtained under another Act. It also does not require that the applicant has received a copy of the document. An officer of the agency reading the information to them over the phone or showing it to them on a computer screen is sufficient.

### **Amendment only – describe the information's deficiencies.**

Applicants can only apply to amend personal information, which is inaccurate, incomplete, out of date or misleading (incorrect). A compliant amendment application must set out what information the applicant claims is incorrect, how they claim it is incorrect and:

- any amendments they claim are required for it to be accurate or not misleading; and/or
- any information the applicant claims is necessary to complete the information or bring it up to date.

### **What if an application is noncompliant?**

An agency must make reasonable efforts to contact the applicant within 15 business days to tell them how their application is noncompliant and must give the applicant a reasonable opportunity to rectify the noncompliance. The agency must give the applicant reasonable advice and help to assist them to rectify their application and make it compliant.

### **How long is a reasonable opportunity?**

What is a reasonable opportunity will depend on the circumstances.



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OIC encourages agencies that have received noncompliant applications from applicants in extenuating circumstances, such as prisoners, to consider allowing a minimum of 20 business days. For all other applicants, 15 business days will generally be reasonable if there are no circumstances which could delay the process. Agencies can also extend the time.

### **Noncompliance decision**

If the applicant does not rectify their application after being given a reasonable opportunity to do so, and the agency decides that the application is noncompliant, the agency must give notice of its decision that the application does not comply with all relevant application requirements and give that decision to the applicant within ten business days of making it.

**For additional IPOLA assistance, please contact the IPOLA team by email [IPOLA.Project@oic.qld.gov.au](mailto: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](mailto:enquiries@oic.qld.gov.au)**

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