



Applying the legislation

GUIDELINE *Right to Information Act 2009*

Departments and Ministers – disclosure logs

This Guideline only applies to departments and Ministers (**departments**). Other agencies, such as local governments, hospital and health services, universities and statutory authorities must refer to [Disclosure Logs – agencies other than departments](#).

What is a disclosure log?

Disclosure logs are part of a department's website that contain the details of RTI applications received by the department. Once an application is finalised and the applicant has accessed the documents, the documents must be uploaded to the disclosure log, subject to some exceptions.

This is intended to prevent the need for multiple applications on the same subject, by giving the community access to documents released under RTI, and increase the flow of information to the community.

When disclosure logs are well designed, individuals can access published information easily, quickly and freely, and only need to apply under the RTI Act as a last resort. This can save money and effort for departments and the community. Disclosure logs also need to be current, complete and accurate to be effective.

The RTI Act and the Ministerial Guidelines

Section 78 and section 78B of the *Right to Information Act 2009* (Qld) (**RTI Act**) set the rules for departmental disclosure logs. These sections of the RTI Act operate in conjunction with the *Ministerial Guidelines: Operation of Publication Schemes and Disclosure Logs*¹, which provide practical guidance on disclosure logs.

OIC's audit of departmental disclosure logs

The Office of the Information Commissioner audited departmental disclosure logs and in 2020 made several recommendations.² These recommendations included that disclosure logs should be easy to find, easy to use, up-to-date, and useful. They should be easy to find on departmental websites, and integrate browse, search and/or filter functions. Information should be published promptly, with all applications having an outcome recorded, and be kept complete and accurate.

¹ Published by the Minister under section 78B(1) of the RTI Act and available at www.rti.qld.gov.au

² Read the entire report here: <https://www.oic.qld.gov.au/about/our-organisation/key-functions/compliance-and-audit-reports/audit-report-disclosure-logs-queensland-government-departments>



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Departmental and Ministerial applications

Many departments process applications on behalf of Ministers and may include those applications in their disclosure log. It is important that these applications are clearly marked in a way that allows a reader to easily differentiate between them.

Stage one of publishing to the disclosure log: receiving the application

As soon as practicable after receiving a valid access application,³ the department must update the disclosure log to include:

- details of what the applicant is applying for, as stated in the application, and
- the date the application was made.

Note that this only applies to *valid* applications.⁴ For non-valid applications, they only go on the disclosure log once they are made valid. If they are made valid, the date of the application will be the date it became valid. If they are never made valid, they never go on the disclosure log.

No identification

At this stage, the department must not include the applicant's or entity's identity in the disclosure log.

Details of the application

The scope of the application does not have to be reproduced verbatim on the disclosure log; instead a meaningful summary can be included. The scope can, for example, be streamlined for understanding, clarity, and brevity as long as the original meaning is not lost.

Additionally, information required to be removed under section 78B(2) (see discussion below) must not be included. This means, for example, where the scope contains personal information, or other information that would infringe someone's right to privacy, it must be deleted or the scope rewritten in a way that removes it.

Recurring themes often appear in the information topics listed in departments' disclosure logs. Departments have an opportunity to identify information frequently

³ For further information about validity of applications, see the Guideline *Noncompliant applications*.

⁴ Section 78(2) of the RTI Act.



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sought and consider if they can make that information available more easily and efficiently, for example through administrative access schemes.

As soon as practicable

The legislation and Ministerial Guidelines do not set specific timeframes for this information to be added to the disclosure log. They only require it to be done as soon as practicable.

The Macquarie Dictionary defines 'practicable' as 'capable of being done'. Whether something is practicable or not will be determined having regard to all the circumstances. This means that what 'as soon as practicable' means must be considered on a case by case basis. It may vary between applications and departments, but it is important that information is published in a timely way.

Amended applications

Section 78 only requires the department to put the details about the applicant's initial valid application on the disclosure log. However, it is good practice to update these details if the applicant amends their scope, as long this does not include information prohibited by section 78B(2). This will ensure that the details of the application align with the uploaded documents once they are accessed by the applicant.

Transferred applications

If an application is transferred in full to another agency, the first agency has no disclosure log obligations in relation to the application. This is because section 38(3) of the RTI Act states that an application transferred in full is taken to have been made to the second agency. The second agency is responsible for meeting relevant disclosure log obligations.

Stage two: publishing to the disclosure log after the applicant accesses the documents

Once an application has been finalised and the applicant has accessed the documents, the second stage of publishing to the disclosure log starts. This falls into two categories:

- publishing the name of the applicant and the entity (if there is one); and
- publishing the documents released under the application that do not contain the applicant's personal information.

Both are subject to the exclusions listed in section 78B(2) (see below).



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When has the applicant accessed the documents?

The applicant has 40 business days from the date of a decision to grant access to pay any fees and access the documents.⁵ The RTI Act allows an agency to give access by providing the applicant with a copy of the documents.

If the documents are:

- Sent by email⁶—the documents are generally accessed when the email is received by the applicant’s information system.⁷ If you use a delivery receipt or the email does not bounce back as undeliverable that should confirm the email was received.
- Collected by the applicant or their agent from the department—the applicant will have accessed them on the day they are collected.
- Sent by post—the applicant is deemed to have accessed the document at the time in which the letter would be delivered in the ordinary course of post.⁸ Australia Post provides information about standard delivery times on its website.⁹
- Inspected—the applicant has generally accessed them when they have completed their inspection. If access is given by inspection, the documents, depending on why access was given that way, may not be publishable to the disclosure log. See below at 78B(2) for more information.

Deferred access

Remember that where access to documents is deferred due to third party review rights, those documents cannot be placed on the disclosure log until access is no longer deferred.

Access given on review

If a department decides to give access to a document on internal review and the applicant accesses the document within the access period section, 78(3) requires the document to be placed on the disclosure log.¹⁰

If an applicant is given access to a document as a result of external review to the Information Commissioner the department is not required to put it on the disclosure

⁵ Or any additional period allowed by the agency – see section 69 of the RTI Act. This time period does not apply if access is deferred due to third party consultation.

⁶ This also applies to documents sent by facsimile.

⁷ Section 24, *Electronic Transactions (Queensland) Act 2001*.

⁸ Section 39A *Acts Interpretation Act 1951*

⁹ <https://auspost.com.au/>

¹⁰ As long as it does not contain the personal information of the applicant and subject to the limitations in section 78B of the RTI Act.



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log. This applies for both access given by way of early resolution and formal decision. The department may choose to do so, as long as the document does not contain the applicant's personal information or information of a kind listed in section 78B(2). If the department decides not to include documents in the disclosure log, a note should be made to explain the outcome of the application process for greater transparency and to avoid concern that the disclosure log is out of date or not compliant.

Who can be included in the disclosure log?

The RTI Act provides for only two people to be identified in the disclosure log once the applicant has accessed the documents:

- the applicant; and
- the entity.

The applicant is the person actually applying for the documents. This will not necessarily be the person dealing with the agency. Where someone is applying on the applicant's behalf, the applicant is the person listed at question two of the application form. Where a parent is applying on behalf of a child, the child is the applicant.

The entity is the *beneficiary* of the application, if there is one. This is the person listed at question four of the application form when question three has been answered yes.

This entity, or beneficiary, is not the same as the agent. The agent, if there is one, should not be listed on the disclosure log.

What documents must be published on the disclosure log?

Documents that have been released to the applicant by the agency that the applicant has accessed must be placed on the disclosure log. This does not include documents that contain the applicant's personal information,¹¹ which must not be included in the disclosure log.¹²

What is a document that contains the applicant's personal information?

A *document* is a single item which may be comprised of many pages, eg a multiple page letter or report is a single document. If the applicant's personal information appears on one of those pages then the document is a document that contains the applicant's personal information.

¹¹ Any information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

¹² Section 78(3) of the RTI Act.



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Section 78B(2) of the RTI Act also contains a list of information that must not be included in the disclosure log.

Section 78B(2) – information that must not be included in a disclosure log

Section 78B(2) of the RTI Act requires a department to remove any information (including an individual's name) from material intended for publication on the disclosure log that:

- is prevented by law from publication
- may be defamatory
- would unreasonably invade an individual's privacy if it was included in the disclosure log
- is, or allows to be ascertained, information—
 - of a confidential nature that was communicated in confidence by a person other than the agency;¹³ or
 - that is protected from disclosure under a contract;¹⁴ or
- would cause substantial harm to an entity if it was included in the disclosure log¹⁵.

Access by inspection

- If access by inspection was given due to a third party's copyright,¹⁶ it will not be appropriate to place the documents on the disclosure log and section 78B(2)(e) will apply.
- If the applicant agreed to inspect only access because, for example, it reduced the impact on third party privacy or removed a third party's objection, it may not be appropriate to place the documents on the disclosure log. Departments should consider the provisions of section 78B(2).
- If access was by way of inspection due to fragility of the documents or because other inspection would impact the resources of the agency,¹⁷ it may be appropriate to consider section 78B(2)(e).

Where documents or information intended for the disclosure log contain this kind of information, 78B(2) requires departments to remove it before publishing or to not publish it. However, good recordkeeping is an important part of complying with section 78B(2). Departments need to ensure that they record their reasons for not

¹³ Guidance regarding whether information was communicated in confidence is provided in the context of the breach of confidence exemption within the RTI Act see the Guideline *Breach of confidence*.

¹⁴ This provision goes further than the exempt information provision under section 8 of schedule 3 of the RTI Act, which is limited to equitable confidentiality and does not include contractual confidentiality. For further information about the exempt information provision, see the Guideline *Breach of confidence*.

¹⁵ See section 78B(2) of the RTI Act.

¹⁶ Section 68(4)(c) of the RTI Act.

¹⁷ Section 68(4)(a) and (b).



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publishing documents or information on the disclosure log, or for redacting information.

Where applications regularly result in the same kinds of redactions/non-publication under section 78B(2), it may be more efficient to develop a pre-publication checklist, identifying the common kinds of information that need to be removed.

Include reasons

Although not a legislative requirement, agencies are more open and transparent when they note on their disclosure logs the reasons for not publishing documents they have released to applicants.

If documents are not accessed by the applicant within the access period

If a department decides to give access to a document that does not include the personal information of the applicant, but the applicant does not access the document within the access period, the department **must** include the following in the disclosure log as soon as practicable after the access period ends:

- details identifying the document
- information about how the document may be accessed; and
- any applicable charges.¹⁸

Any person who pays the appropriate charges can access that document. The document can then be included in the disclosure log, subject to the requirements of section 78B(2).¹⁹ No further fees for that document can be charged if a person seeks access via the disclosure log.

Removing information from the Disclosure Log

Documents released to the applicant and made available on the disclosure log can be removed from the disclosure log after six months.²⁰ This does not apply to the application *details*, which must remain on the disclosure log even after the documents are removed. An electronic copy of the documents should continue to be available for as long as the original file for the application is required to be kept.

Under the General Retention and Disposal Schedule issued by Queensland State Archives,²¹ RTI application documents have a set retention period. Once RTI application documents are legitimately disposed of under a Retention and Disposal Schedule, the application details can be removed from the disclosure log.

¹⁸ Section 78(4) of the RTI Act.

¹⁹ Section 78A(4) of the RTI Act.

²⁰ As set out in the Ministerial Guidelines. Documents on disclosure logs are copies of documents held elsewhere by agencies, and disclosure log publication impacts on available web capacity.

²¹ <https://www.forgov.qld.gov.au/schedules/general-retention-and-disposal-schedule-grds>



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For additional information and assistance please refer to the OIC's Guidelines or contact the Enquiries Service on 07 3234 7373 or email 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

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