

Sections 54 and 191 of the RTI Act and sections 68 and 199 of the IP Act set out the requirements of a prescribed written notice (PWN). This template is intended to cover the information that must be included in a PWN for it to be valid under the RTI and IP Acts. It is a guide only – your agency may like to adapt the template to meet your specific needs or build on the template to include additional information. The template is intended to cover typical applications. It will not be suitable for unique situations such as neither confirm nor deny, refusal to deal or healthcare decisions. OIC’s website has specific guidance on these types of decisions.

Structure your PWN so that the most important information goes first. For an applicant, this will be the decision.

If you are deleting information from a document on the basis that it is irrelevant, exempt or contrary to the public interest to disclose, you must explain that the document is a copy from which information has been deleted, as provided for in sections 73, 74 and 75 RTI Act / 88, 89 and 90 IP Act.

PWNs must include the name and position of the decision maker and the date of the decision. For applications made to a Minister, you must hold the appropriate authority to deal with the access application.

Reasons for decision must set out the findings on material questions of fact; and refer to the evidence or other material on which those findings were based: *Acts Interpretation Act 1954*, section 27B.

PWNs must include review rights. Some decisions only allow for external review (eg deemed decisions, healthcare decisions).

Our reference: 123RTI
Your reference: SM:KL

Dear [applicant]

Decision – application under the *Right to Information Act 2009 / Information Privacy Act 2009*

I refer to your application for access to documents made to [agency name] on [date] under the [*Right to Information Act 2009 (Qld) (RTI Act) / Information Privacy Act 2009 (Qld) (IP Act)*].

The purpose of this letter is to notify you of my decision on your application.

1. Decision

I have decided to give you full access to [x] pages within the scope of your application, although some irrelevant material, not related to your application, has been deleted from them.¹

I have decided to refuse you access to information that is exempt from release or contrary to the public interest to release. This means I have granted you partial access to copies of:

- [x] pages with exempt information deleted²; and
- [x] pages with contrary to the public interest information deleted³.

I, [name of decision-maker] made this decision on [date] as [position title], exercising a delegation from the principal officer of [agency].

The reasons for my decision are set out in the **attachment**.

2. Review rights

If you are not satisfied with this decision you can apply for an [internal review or an external review / if the decision is deemed, a healthcare decision, or made by the agency’s principal officer external review].

An internal review application must be made to [agency] within **20 business days** after the date of the written notice of this decision. Your application can be lodged in one of the following ways:

¹ As provided for in [section 73 of the RTI Act/section 88 of the IP Act].

² As provided for in [section 74 of the RTI Act/section 89 of the IP Act].

³ As provided for in [section 75 of the RTI Act/section 90 of the IP Act].

In person: *[insert address]*
Post: *[insert postal address]*
Fax: *[insert fax number]*
Email: *[if applicable insert email address]*
Online: *[if applicable insert website address]*

Applications made electronically may have an impact on timeframes.

If you are dissatisfied with the internal review decision, you can then apply for external review. You may however apply directly for external review without first seeking internal review.

If applying for external review, either directly or after internal review, the application must be made to the Information Commissioner within **20 business days** from the date of the written notice of the decision to be reviewed. An application can be lodged with the Office of the Information Commissioner in one of the following ways:

In person: Level 11, 53 Mary St, Brisbane
Post: PO Box 10143, Adelaide Street, Brisbane, Qld, 4000

Email: administration@oic.qld.gov.au
Online: www.oic.qld.gov.au

If you have a question about applying for external review, you can contact the Office of the Information Commissioner's enquiries service on 07 3234 7373.

For more information, please see the **enclosed** Office of the Information Commissioner's guideline on *Explaining your review rights*.

3. Processing and access charges

A PWN must itemise any processing or access charges that must be paid by the applicant. The final charge cannot be more than the amount in the charges estimate notice.

Where applicable: set out the processing charges in relation to all documents (including those to which access was refused) and the access charges for those documents to which part and full access is being granted. Setting out the itemisation of charges in a table is an effective way to present the information. If it is going to be too long, you might want to put the itemisation in a separate page at the back and only include the total amount in this paragraph.

4. Accessing the documents

Paragraph 1 of this notice sets out the documents that you are entitled to access in full or in part. **[Access to some of these documents must be deferred.]**

You have 40 business days from the date of this decision to access those documents. You must pay any applicable processing and access charges before you can access the documents.

If you require additional time to access the documents please contact me within the 40 business days to discuss your request for an additional access period. If you do not take steps to access the documents within

40 business days, or any additional period allowed, your entitlement to access the documents will expire.

Deferred Access [Only use if access has been deferred pending a third party's review rights]

As part of processing your application I was required to consult with a third party who has objected to the release of documents. I have decided you are entitled to be given access to those documents but I am required to defer giving you copies until the third party has exercised their review rights or their review rights have lapsed. I will notify you in writing when you are able to access the documents. You will then have 40 days from the date of that notice to access the documents.

5. Public access to the documents

Departments and Ministers have different disclosure log obligations from other agencies: see section 78 for departments and Ministers, and section 78A for all other agencies.

Under the RTI Act, documents released to you that do not contain your personal information [**must (departments and Ministers)/can (all other agencies)**] be placed on the disclosure log [**(departments and Ministers only) along with your name and the name of anyone you indicated the application was to benefit**]. This cannot occur until at least 24 hours after you access the documents.

Documents which contain defamatory information, information that is unlawful to publish, which would breach an individual's right to privacy or is confidential or contractually protected from disclosure cannot be placed on the Disclosure Log.

If you do not access the documents within the access period outlined at paragraph 4 of this decision, details of the application can be placed on the Disclosure Log and other people may be able to access them by paying a fee.

If you have any questions, please contact me on [**contact details**].

Yours sincerely

J. Smith

Jane Smith

REASONS FOR DECISION

Your application

Unless it is very lengthy, quote the scope directly from the access application, rather than paraphrasing it. Explain if the scope has changed following negotiations with the applicant.

You applied for access to:

The complaint Sally Jones made about me and the legal advice that the Department got about this matter.

**** Should you neither confirm nor deny that the complaint exists? ****

Where an application is expressed in this form – seeking access to a complaint made by a named person – it's important to think about whether you should neither confirm nor deny that the complaint exists. In this case, it's ok to deal with the application as it is clear from the evidence set out below that the applicant has been advised by the agency during the course of the investigation that Ms Jones has made the complaint about her.

Searches conducted

It may be helpful to outline the searches conducted in response to the application. This won't be necessary in every case – for example, where the applicant seeks specific documents and all documents have been located.

If you provide information about the searches, provide enough detail for the applicant to understand the nature and extent of searches that were conducted. For example:

- identify the locations/offices/units/records/databases in which searches were conducted for documents
- explain why those locations/offices etc were selected as appropriate locations to search for the documents
- set out what search terms used for electronic searches; and
- set out the results of the searches (use a schedule if appropriate).

Documents located in response to your application

Describe the nature of the located information while taking care not to reveal information that you are claiming is exempt or contrary to the public interest to disclose. The level of detail included in the description will depend on the number and type of documents located.

In response to your application, I located:

1. a 12 page memorandum of legal advice from Legal Branch to the Human Resources Branch (Legal Advice); and
2. a two page complaint letter from Ms Jones dated 2 February 2015 (Complaint Letter).

Reasons for decision

Providing reasons for decision is an important accountability mechanism that ensures transparency in decision-making. A statement of reasons provides the person affected by the decision with an opportunity to have the decision properly explained.

The reasons for decision must properly explain:

- the power to make the decision
- the legal basis on which the decision was made
- the evidence considered
- the findings of fact and how these were reached; and
- how the law applies to the facts in this specific case.

If you have different types of information or different grounds for refusal, deal with them separately. Think about how best to structure the decision. In some cases, you may be able to deal with all of the contrary to the public interest information together. However, if you have different categories of information that give rise to different public interest factors, it may be easier to separate them.

(a) Legal advice

I have decided to refuse you access to the Legal Advice on the basis that it is subject to legal professional privilege.

Relevant law

Explain the relevant law

If you decide that the information is exempt, the prescribed written notice must include a reference to section 47(3)(a) of the RTI Act and state the provision in schedule 3 that you are relying on: section 54 of the RTI Act and section 68 of the IP Act. However, there is ordinarily no need to set out the legislation in full. Summarising the legislation will often make it easier for the applicant to understand. Consider footnoting references to section numbers and decisions to make the reasons easier to read. OIC guidelines and information sheets often have plain English explanations of complex legal principles under the RTI Act. You're welcome to cut and paste from these resources.

Consider your audience and the complexity of the issues when deciding how much detail to include in your explanation of the relevant law. This straightforward explanation of legal professional privilege will generally be sufficient, unless the documents under consideration raise complex issues, for example, waiver.

Under the RTI Act, a person has a right to be given access to documents of an agency.⁴ However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.⁵ The RTI Act provides that access may be refused to documents to the extent that they comprise exempt information.⁶ Schedule 3 of the RTI Act sets out categories of information that Parliament has decided would, on balance, be contrary to the public interest to disclose. These categories of information are exempt from disclosure.⁷

One of these categories of exempt information is information which would be privileged from production in a legal proceeding on the ground of legal professional privilege.⁸

For information to be subject to legal professional privilege, it must be a communication that:

- has been made in the course of a lawyer-client relationship
- is confidential and remains confidential; and
- is made for the dominant purpose of:
 - seeking or providing legal advice (known as ‘advice privilege’); or
 - to be used in existing or reasonably anticipated legal proceedings (known as ‘litigation privilege’).

If these elements are satisfied, the communication will be protected by legal professional privilege. However, this protection can be lost, for example, if the client waives legal professional privilege.

I have **enclosed** an information sheet from the Office of the Information Commissioner about legal professional privilege.

Is the Legal Advice subject to legal professional privilege?

Yes, it is.

The Legal Advice is a memorandum of advice provided by the Department’s internal legal advisors within the Legal Branch to their client, the Human Rights Branch (HRB) of the Department. I have reviewed the Legal Advice and am satisfied that the dominant purpose of the communication was to provide legal advice. I am also satisfied that the advice has been kept confidential. There is nothing before me to suggest that HRB has waived legal professional privilege over the Legal Advice.

Accordingly, I am satisfied that the Legal Advice is subject to legal professional privilege and have decided to refuse you access to it under the RTI Act.

(b) Complaint letter

Describe the information that you are dealing with, if you haven’t already done so.

I have also decided to refuse you access to the Complaint Letter because disclosing it would, on balance, be contrary to the public interest.

⁴ Section 23 of the RTI Act.

⁵ As set out in section 47 of the RTI Act.

⁶ Section 47(3)(a) of the RTI Act.

⁷ Section 48(2) of the RTI Act.

⁸ Schedule 3, section 7 of the RTI Act.

Relevant law

If you decide that the information is, on balance, contrary to the public interest to disclose, the prescribed written notice must include a reference to section 47(3)(b) of the RTI Act and any factors that you identify either in favour or against disclosure: section 54 of the RTI Act and section 68 of the IP Act.

An agency may refuse access to information if its disclosure would, on balance, be contrary to the public interest. The RTI Act contains lists of public interest factors which I am required to apply to the information you are seeking.⁹ Once I have identified the relevant public interest factors for and against disclosure I must weigh them up to decide if, on balance, releasing the information you have applied for would be contrary to the public interest.¹⁰

OIC often has information sheets that can help to explain issues to the applicant. Consider including these with your decision.

I have **enclosed** the Office of the Information Commissioner's information sheet for applicants on workplace investigations. I encourage you to read this information sheet along with these reasons for decision.

Evidence and facts I have relied on in making my decision

Evidence and facts

Set out any facts that you have based your decision on and explain the evidence that you have used to reach these findings of fact – for example, your discussions with the business unit, correspondence with the applicant contained in the information in issue.

On 2 February 2015, Ms Jones lodged a complaint about you with the Department. I made enquiries with Mr Tom Richards, Director of HRB about this matter. Mr Richards advised me that:

- HRB wrote to you on 4 February 2015 to advise you that Ms Jones had lodged a complaint
- HRB interviewed you on 25 March 2015
- during this interview HRB:
 - advised you of the substance of the allegations made against you; and
 - invited you to provide your side of the story.
- HRB wrote to you on 4 March 2015 to advise you that the investigation had been finalised, the complaint had not been substantiated and no further action would be taken against you.

Mr Richards has provided me with a copy of HRB's letters to you. I have also reviewed the transcript of your interview with HRB.

In making my decision, I have taken into account the following:

- the terms of your access application

⁹ Section 49 and schedule 4 of the RTI Act.

¹⁰ Section 49(3) of the RTI Act.

- the content of the information I located in response to your access application
- my conversations with Mr Richards from HRB
- relevant provisions of the RTI Act; and
- relevant decisions and guidelines from the Information Commissioner.

Apply the law to the facts

The reasons must explain all of the steps in the reasoning process that led to the decision – linking the facts to the decision. The reasons should enable the applicant to understand exactly how the decision was reached – they should not have to guess. The reasons must go further than just expressing conclusions, it must give reasons for the conclusions.

Are there are any irrelevant factors?

Irrelevant factors

You are required to identify any applicable irrelevant factors and then disregard them.

As part of making my decision I am required to identify any applicable irrelevant factors and disregard them. No irrelevant factors arise from this access application.

What are the relevant factors favouring disclosure?

Make sure to address the factors favouring disclosure as well as the factors favouring nondisclosure.

Considering the relevant factors is a two-step process. The **first step** is to identify if the factor is relevant. This requires a careful assessment of the wording of the factor.

The Complaint Letter is your personal information. This is a factor favouring disclosure of the information.¹¹

Disclosing the Complaint Letter would enhance the Department's accountability and transparency with respect to its handling of complaints and give you background information about the complaint.¹² These are also factors favouring disclosure of the Complaint Letter.

I have also considered whether disclosing the Complaint Letter could contribute to the administration of justice for you, including by affording you procedural fairness.¹³ However, the allegations in the Complaint Letter have been investigated, and found to be unsubstantiated. I am satisfied you have been afforded procedural fairness through the investigation process undertaken by HRB. No action is being taken against you in relation to the Complaint Letter. Accordingly, I do not consider disclosing the Complaint Letter would advance the administration of justice for you.

What are the relevant factors favouring nondisclosure?

The Complaint Letter is another person's description of issues of concern to them in the workplace. Accordingly, it is the individual's personal information. The RTI Act recognises that a public interest harm will arise if disclosing information could reasonably be expected to

¹¹ Schedule 4, part 2, item 7 of the RTI Act.

¹² Schedule 4, part 2, items 1 and 11 of the RTI Act.

¹³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

disclose another individual's personal information.¹⁴ I have considered whether I could disclose the Complaint Letter to you without revealing other individuals' personal information. However, the nature of this information is such that your information cannot be separated from the information of other people. I am also satisfied that disclosing this information would prejudice the protection of the individual's privacy.¹⁵

The RTI Act also recognises a factor favouring nondisclosure where disclosure could reasonably be expected to prejudice the management function of an agency.¹⁶ I acknowledge that it is reasonable for an employee who made a complaint to their manager about issues in the workplace to expect that the substance of that complaint will be conveyed to the other people involved during the course of the agency's investigation, to give the other parties an opportunity to respond. However, I do not consider employees expect that all of the information they provide about their complaint will be released in full through the RTI Act processes, particularly in circumstances where the investigation has been finalised. The Information Commissioner has previously found that disclosing communications between staff and management in which staff convey concerns of a sensitive nature may make staff reluctant to raise similar concerns in the future.¹⁷ I am satisfied that disclosing the Complaint Letter is likely to make employees more reluctant in the future to raise similar concerns with management. It is reasonable to expect that this would significantly prejudice the Department's ability to effectively manage staffing issues. Therefore I am satisfied this is a relevant factor favouring nondisclosure.

Where does the balance of the public interest lie?

Reach your conclusion

The **second step** is to consider the weight to be afforded to each relevant factor and decide where the balance of the public interest lies. Take care not to reveal information that you are claiming is exempt or contrary to the public interest to disclose.

The Department must be accountable and transparent in its handling of workplace complaints. Release of government information to the public does enhance government accountability. However, the substance of the allegations contained in the Complaint Letter were conveyed to you during the investigation. I do not consider that disclosing the Complaint Letter itself would further advance the Department's accountability or transparency to any significant degree. Accordingly, I afford these factors favouring disclosure low weight.

I give significant weight to the fact that the Complaint Letter is your personal information. However, this must be balanced against the other factors favouring nondisclosure.

As I have explained above, the Complaint Letter is another individual's personal information. Although this information appears in a workplace context, it is their personal account of, and emotional reactions to, events in the workplace and concerns of a sensitive nature that were conveyed to management. I consider it is not related wholly to the routine day-to-day work activities of a public service officer and is not routine personal work information. Given the sensitive nature of the information, the extent of the public interest harm that could be anticipated from disclosure is quite significant. For these reasons, I also find that disclosing it

¹⁴ Schedule 4, part 4, item 6 of the RTI Act.

¹⁵ Schedule 4, part 3, item 3 of the RTI Act.

¹⁶ Schedule 4, part 3, item 19 of the RTI Act.

¹⁷ *I6XDOH and Department of Community Safety* (Unreported, Queensland Information Commissioner, 26 June 2012) at paragraph 38.

would be a significant intrusion into the privacy of these individuals. I afford significant weight to these factors favouring nondisclosure.

I have also considered the impact of disclosing the Complaint Letter on the Department's ability to manage its staff. I consider this prejudice is likely to be significant and accordingly, I afford significant weight to this factor.

If there are a number of factors both for and against disclosure, it may be helpful to summarise the factors and the weight afforded to each at the conclusion of the balancing.

Having carefully balanced the relevant factors favouring disclosure against the factors favouring nondisclosure, I find that the factors favouring nondisclosure outweigh those in favour of disclosing the Complaint Letter. Accordingly, I find that, on balance, it would be contrary to the public interest to disclose the Complaint Letter to you.

OIC training use only