



## Applying the Legislation

GUIDELINE *Right to Information Act 2009 and Information Privacy Act 2009*

### Fees and charges

The *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**) give people a right to access documents from government agencies<sup>1</sup>. The RTI Act requires payment of an application fee, processing charges and access charges<sup>2</sup> and the IP Act requires payment of access charges<sup>3</sup>.

#### Note

All fees and charges under the RTI and IP Acts are GST exempt.<sup>4</sup>

### Application fee

The application fee<sup>5</sup> must be paid for an RTI application to be valid.<sup>6</sup> There is no application fee for IP Act applications.

If the fee is not paid with the application, the agency must contact the applicant and give them a reasonable opportunity to pay the application fee.<sup>7</sup> If the applicant still does not pay the application fee, the agency must give them a prescribed written notice of its reviewable decision that the application is non-compliant.<sup>8</sup>

### How much is the application fee?

The application fee is \$51.70.<sup>9</sup>

### Can the application fee be waived?

No. Section 24(2) of the RTI Act states that the application fee must accompany an application. Even if the applicant is eligible for a waiver of the processing and access charges on the grounds of financial hardship, there are no provisions in the RTI Act which allow for the application fee to be waived in any circumstances.

#### Application fee on part transfer

If an RTI application is part-transferred to another agency, the applicant must pay another application fee to the second agency.<sup>10</sup>

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

<sup>2</sup> Set out in the *Right to Information Regulation 2009* (Qld) (**RTI Regulation**).

<sup>3</sup> Set out in the *Information Privacy Regulation 2009* (Qld) (**IP Regulation**).

<sup>4</sup> See Volume 5, Part 4 (10.3 & 10.4) of the Determination for further information: [https://www.legislation.gov.au/Details/F2010L03352/Html/Volume\\_5](https://www.legislation.gov.au/Details/F2010L03352/Html/Volume_5)

<sup>5</sup> The amount of the application fee is prescribed under the RTI Regulation.

<sup>6</sup> Section 24(2) of the RTI Act.

<sup>7</sup> Section 33 of the RTI Act.

<sup>8</sup> See the OIC Guideline *Noncompliant applications* for more information.

<sup>9</sup> Section 4 of the *Right to Information Regulation 2009*.

<sup>10</sup> Section 38 of the RTI Act. Refer to Transferring Access Applications for more information.



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### Can the application fee be refunded?

The RTI Act requires the application fee to be refunded in only two circumstances:

1. If a deemed decision is made, ie the agency did not make a considered decision either in the original processing period or in the further specified period allowed by the applicant<sup>11</sup>; and
2. Where an application is moved from the RTI Act to the IP Act because it is limited to documents containing the applicant's personal information.<sup>12</sup>

#### Note

If agencies wish to refund the application fee in any other circumstances they can do so relying on their own financial delegations or policies.

### Processing charges

The *processing charge* is the charge for the time an agency spends:

- searching for or retrieving a document; and
- making, or doing things related to making, a decision on an RTI application.<sup>13</sup>

There are no processing charges for IP applications.

#### Duty to minimise charges

An agency<sup>14</sup> has a duty to minimise any processing or access charges payable by the applicant.<sup>15</sup>

### How much is the processing charge?

The processing charge<sup>16</sup> is:

- Nil, if the agency spends no more than 5 hours processing the application; or
- \$8.00 per 15 minutes or part of 15 minutes of the time spent working on the application, including the first five hours<sup>17</sup>, if the agency spends more than 5 hours processing the application.<sup>18</sup>

<sup>11</sup> See section 46(1)(b) of the RTI Act. For more guidance on the processing period, further specified period, and deemed decisions see the Guideline: *How to Calculate Timeframes*

<sup>12</sup> Section 34(3) of the RTI Act. For more information refer to *Applications made under the Wrong Act*.

<sup>13</sup> Section 56 of the RTI Act.

<sup>14</sup> In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

<sup>15</sup> Section 58 of the RTI Act and section 78 of the IP Act.

<sup>16</sup> As prescribed under the RTI Regulation.

<sup>17</sup> As per the example in section 5 of the RTI Regulation.

<sup>18</sup> Section 5 of the RTI Regulation.



### ***Agencies cannot charge for personal information documents***

Where an RTI application includes documents that contain the applicant's personal information an agency **must not** charge any processing charges for those documents.<sup>19</sup>

Depending on the ratio of personal information documents to non-personal documents, there may be various ways for an agency to calculate the processing charge. Whatever the method, the time spent on personal documents must not be included in the total charge.

In order to ensure the applicant is aware that the agency is not improperly charging the applicant, agencies may wish to consider noting on the Charges Estimate Notice that they have not included personal documents when calculating the charge.

### **What time cannot be included in calculating the processing charge?**

If a document is not where an agency's filing system indicates it should be, and an agency has to spend extra time trying to find it, the agency cannot charge the applicant for that time.<sup>20</sup>

For example, if an agency spends an additional two hours locating a document that was incorrectly filed, those additional two hours cannot be counted when calculating the processing time for the application.

### **Access charges**

#### **What are access charges?**

*Access charges* are the cost of giving the applicant access to a document<sup>21</sup>, for example the cost of photocopies. They apply whether or not the document contains the applicant's personal information.

#### **How much are access charges?**

The access charge for a document is the actual cost incurred by the agency for:

- engaging another entity to search for and retrieve the document
- relocating the document as necessary for access to be given to the document
- transcribing audio recordings (of words), shorthand writing or codified words<sup>22</sup>

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<sup>19</sup> Section 59 of the RTI Act.

<sup>20</sup> Section 5(2) of the RTI Regulation.

<sup>21</sup> Section 57 of the RTI Act and section 78 of the IP Act.

<sup>22</sup> Section 6(1)(a)(iii) of the RTI Regulation and section 68(1)(d) of the RTI Act.



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- creating a written document using equipment usually available to the agency for retrieving or collating stored information<sup>23</sup> (for example printing a report from a database); or
- otherwise giving access to the document, for example by reproduction of the document, such as duplicating an X-ray or photograph (excludes A4 black and white photocopies).

If an applicant is given access to a document as an A4-size black and white photocopy, the cost is \$0.25 for each page.<sup>24</sup> This is the only specific access cost in the RTI and IP Regulations.

There is **no cost** for providing access to a document in electronic form, such as by email or on a disc. These costs are specifically excluded from the access charge by both the RTI and IP Regulations.<sup>25</sup>

### When can processing or access charges be waived?

The processing and access charges may be waived if they are uneconomical to charge, and they must be waived if the applicant is in financial hardship.<sup>26</sup>

### Uneconomical to charge

If an agency considers that the associated costs of receiving the processing and/or access charges would be higher than the charges themselves, it can waive the charges on the grounds that it is uneconomical to charge the applicant.<sup>27</sup>

Associated costs are the costs of:

- for the RTI Act, estimating the charge
- for both Acts, otherwise complying with the Acts in relation to the charge
- receiving payment of the charge

#### Note

Developing a policy setting out the maximum amount of processing and access charge that would be considered 'uneconomical to charge' will ensure a consistent approach within the agency.

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<sup>23</sup> Section 6(1)(a)(iv) of the RTI Regulation and section 68(1)(e) of the RTI Act.

<sup>24</sup> Section 4(1)(b) of the IP Regulation and section 6(1)(b) of the RTI Regulation.

<sup>25</sup> Section 6(2) of the RTI Regulation and section 4(2) of the IP Regulation.

<sup>26</sup> As outlined in chapter 3, part 6, division 3 of both the RTI Act and the IP Act.

<sup>27</sup> Section 64 of the RTI Act and section 81 of the IP Act.



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### **Applicant under financial hardship**

Agencies must make a decision to waive the processing and access charges where:

- the applicant is an individual and a holder of a valid concession card<sup>28</sup>; or
- the applicant is a non-profit organisation and the Information Commissioner has made a decision that the organisation has non-profit status under section 67 of the RTI Act. [These decisions are of 12 months duration and can be viewed on OIC's website.](#)

For an individual applicant, the charges must be waived if:

- an applicant provides a copy of their *concession card* with the request
- the agency considers the applicant is the *holder* of the concession card; and
- the agency considers the applicant is not making the application for another person who is seeking to avoid payment of the charge.<sup>29</sup>

The concession card must be one of the following:

- Centrelink Pensioner Concession Card
- Veterans' Affairs Pensioner Concession Card; or
- Centrelink Health Care Card.<sup>30</sup>

A holder of a concession card is someone who is named on the concession card and is qualified to be named on the concession card at the time it is being relied on (including as a dependent).<sup>31</sup> For further information about the accepted concession cards and waivers on the grounds of financial hardship for an individual see the Guideline: *Applying for financial hardship as an individual*.

### **When does an agency have to tell the applicant about charges?**

Under the RTI Act, agencies have to issue the applicant with a charges estimate notice (CEN). A CEN is a written estimate of the total processing and access charges for the application. It has to be issued even if no charges are payable.<sup>32</sup>

There is no requirement to provide a CEN under the IP Act, so applicants are not given an estimate of any access charges.

For more detailed information about CENs, see the Guideline: *Schedule of relevant documents and charges estimate notice*.

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<sup>28</sup> Section 66(2)(a) of the RTI Act and section 82(2) of the IP Act.

<sup>29</sup> Section 66(2)(a) of the RTI Act and section 82(2) of the IP Act.

<sup>30</sup> Section 66(5) of the RTI Act and 82(4) of the IP Act.

<sup>31</sup> Section 66(5) of the RTI Act and 82(4) of the IP Act.

<sup>32</sup> If there are no charges payable, for example because it is uneconomical to charge, then the CEN could form part of the decision notice.



## What information about charges is required in a decision notice?

The final amount of the processing and/or access charges payable by the applicant must be included in the agency's written notice of the access decision.<sup>33</sup> This can be less, but cannot be more, than the agency's estimate in the CEN.

## When do charges have to be paid?

The processing and/or access charges must be paid before the applicant is given access to documents.<sup>34</sup>

These charges must be paid even if access to the documents is refused, or the applicant does not access the documents within the access period.<sup>35</sup>

## Review rights

There are no review rights from the *amount* of a processing or access charge.<sup>36</sup>

An applicant can seek a review of the decision to charge at all, for example if an agency refused to waive the charges on the grounds of financial hardship.<sup>37</sup>

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](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.**

If you have any comments or suggestions on the content of this document, please submit them to [feedback@oic.qld.gov.au](mailto:feedback@oic.qld.gov.au)

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

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<sup>33</sup> Section 54(2) of the RTI Act and section 68(2) of the IP Act.

<sup>34</sup> Section 60(1) of the RTI Act and section 79 of the IP Act.

<sup>35</sup> Section 60(2) of the RTI Act.

<sup>36</sup> Section 81 and section 86 of the RTI Act.

<sup>37</sup> See definition of 'reviewable decision' under Schedule 5 of the RTI Act.