



## 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>.

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

#### **How to determine the amount of the application fee or charge**

The relevant Regulation, RTI or IP, list the number of fee units payable for the application fee, processing charge, or access charge. The *Acts Interpretation (Fee Unit Regulation) Regulation 2022 (Fee Unit Regulation)* lists the dollar amount of a fee unit.

To determine the amount of the fee or charge, multiply the number of fee units by the dollar amount in the Fee Unit Regulation and round the result following the instructions in the RTI or IP Regulation.<sup>5</sup>

Note that the current application fee, processing charge, and access charge are listed in this guideline.

#### **Application fee**

The application fee 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?**

From 1 July 2022, the application fee is \$53.90.<sup>9</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> Section 3A of the RTI Regulation or section 4(4) of the IP 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*.



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### **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>

### **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 will have to rely on their own financial delegations or policies.

## **Processing charges**

### **How much is the processing charge?**

From 1 July 2022, the RTI processing charge<sup>13</sup> is:

- nil, if the agency spends no more than 5 hours processing the application; or
- \$8.35 per 15 minutes or part of 15 minutes of the time spent working on the application, including the first five hours<sup>14</sup>, if the agency spends more than 5 hours processing the application.<sup>15</sup>

There are no processing charges for IP applications.

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

<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> As prescribed under the RTI Regulation.

<sup>14</sup> As per the example in section 5 of the RTI Regulation.

<sup>15</sup> Section 5 of the RTI Regulation.



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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>16</sup>

### **Duty to minimise charges**

An agency<sup>17</sup> has a duty to minimise any processing or access charges payable by the applicant.<sup>18</sup>

### **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.

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 needs 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**

*Access charges* are the cost of giving the applicant access to a document.<sup>21</sup> They apply even if the document contains the applicant's personal information.

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<sup>16</sup> Section 56 of the RTI Act.

<sup>17</sup> In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

<sup>18</sup> Section 58 of the RTI Act and section 78 of the IP Act.

<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.



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The access charge for a document—except where access is given to an A4 black and white photocopy—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>
- 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.

The cost of giving access to an A4 black and white photocopy is \$0.25 per page.<sup>24</sup>

### **Giving access in electronic form**

There is no cost for providing access 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>

Access provided through other electronic methods can be charged at the actual cost of giving access. However, if giving access using these methods—for example a weblink from which documents can be downloaded—involves no cost to the agency, they will attract no access charges.

### **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; and
- receiving payment of the charge

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

<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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**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.

**Applicant under financial hardship**

Agencies must decide to waive the processing and access charges where the applicant is in financial hardship and the requirements of the Act have been met.

Where the applicant is a non-profit organisation, they will be in financial hardship if the Commissioner has made a decision that the organisation has financial hardship status under section 67 of the RTI Act. [This status is granted for twelve months and can be viewed on OIC's website](#). If the applicant currently has financial hardship status, the agency must waive the charges.

For an individual applicant, they must ask to have the charges waived and provide a copy of their concession card. The agency must decide to waive the charges if:<sup>28</sup>

- the concession card is one which is recognised by the Act
- 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>

The holder of a concession card is someone who is named on the concession card and would be qualified to be named on the concession card at the time it is being relied on (including as a dependent).<sup>31</sup> Refer to *Applying for financial hardship as an individual* for more information about recognised concession cards and financial hardship.

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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.



## 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>

CENs are not provided under the IP Act, so there is no requirement to give applicants an estimate of any access charges. Agencies can advise applicants of any potential access charges if they choose to do so.

For more information about CENs, refer to *Schedule of relevant documents and charges estimate notices*.

## 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 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 is no right to seek a review of the *amount* of a processing or access charge,<sup>36</sup> but 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).

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<sup>32</sup> If there are no charges payable, for example because it is uneconomical to charge, some agencies include the CEN in the decision notice.

<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.



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**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.**

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