



Information Sheet

Right to Information Act 2009

Applying for medical records of a person who is deceased – a guide for applicants

Overview

Under the *Right to Information Act 2009* (RTI Act) you can apply for access to the medical records of someone who is deceased if the records are held by a Queensland government agency. However, making an application does not guarantee access as the agency may refuse access to information that they decide is exempt or contrary to the public interest to release under the RTI Act.

This Information Sheet is intended to help you understand the factors an agency is required to consider if you apply for access to the medical records of a deceased person.

Deceased person's privacy interests

Medical and health information is sensitive personal information which is subject to strong privacy protections. This is the case even after a person's death. However, in some situations these privacy interests may be reduced or there may be other factors, outweighing the privacy interests, which favour disclosure of the information to you.

Do you need to give reasons for applying?

You are not required to give reasons for making an application under the RTI Act. However, telling the agency about your reasons for applying, your relationship with the deceased person, and any involvement you may have had in their medical treatment will help the agency identify relevant factors when making their decision about whether or not the information can be released.

Are you an eligible family member?

If you are an *eligible family member* of the deceased person the agency will take that into consideration as a factor which could favour disclosure of the medical information to you. However, there is also a factor *against* disclosure if the agency thinks that disclosure of the personal information to an eligible family member could impact on the deceased person's privacy if they were still alive.

An 'eligible family member' can include a spouse, but other people may be eligible depending on the circumstances. Who can be an *eligible family member* for a deceased person is set out in schedule 5 of the RTI Act and explained in [OIC's information sheet](#)¹.

¹<http://www.oic.qld.gov.au/guidelines/for-community-members/information-sheets-access-and-amendment/eligible-family-member-for-a-deceased-person>



Office of the Information Commissioner
Queensland

Evidence of involvement and knowledge of care

The Information Commissioner has previously found that the applicant's involvement in care, their extent of knowledge of the medical history/incident, and evidence of any special dependence or relationship may be relevant when deciding if it is in the public interest to disclose a deceased person's medical records.

You do not need to be an eligible family member for these factors to apply. If any of these factors apply in your circumstances this may be sufficient to outweigh the privacy interests against disclosure, for example, if you can provide evidence that you had a special relationship with the person or made decisions for them under an Enduring Power of Attorney for health matters.

It is extremely unlikely that medical records of a deceased person would be released to someone who is not an eligible family member, or who did not have a close relationship with the deceased or was not closely involved in the deceased person's care.

Accountability of healthcare provided

In some cases it may be in the public interest for information about how a patient was treated by an agency to be disclosed. This would allow assessment of whether the care and/or treatment provided was appropriate in the circumstances. This could arise, for example, where disclosure would expose unsatisfactory or negligent performance and would enable remedial or compensation action to be taken.

Historical records

Records that contain information about the personal affairs of an individual (such as medical records) are generally subject to a restricted access period of 100 years from the date of the last action on the file. After that time they may be available to access without the need to make an RTI Act application. If you are seeking such records you can contact the Queensland State Archives on (07) 3131 7777 or visit the [website](#).²

For additional information and assistance please refer the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email enquiries@oic.qld.gov.au.

This information sheet 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

² <http://www.archives.qld.gov.au>