



Applying the legislation

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

How to conduct an Internal Review

Overview

This guideline outlines internal review¹ rights for decisions made by an agency² in relation to applications for access and amendment under the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**).

An applicant has a right of internal review (conducted within the agency), followed by external review (conducted by the Office of the Information Commissioner) of most reviewable decisions. Alternatively, an applicant may choose to apply directly for an external review.

Reviewable decisions

Schedule 5 of the RTI Act and schedule 5 of the IP Act contain a list of reviewable decisions. Some of these cannot be *internally* reviewed, including³:

- a decision on an internal review application
- a decision made personally by an agency's principal officer
- a decision made personally by a Minister
- a decision by a healthcare professional
- a deemed decision.⁴

Only external review is available for these decisions.

Search issues on internal review

An applicant who has been given a reviewable decision can apply for an internal review of that decision subject to the exceptions above. If an applicant applies for internal review of a reviewable decision, and the agency accepts it, the agency can also deal with search issues raised by the applicant:

- if the search issues are part of the reviewable decision, for example where the agency has made a decision that documents are non-existent or unlocatable under section 52 of the RTI Act; or
- alongside the reviewable decision, for example where the applicant believes there are extra documents that the agency didn't address in its decision.

¹ The relevant sections regarding internal review can be found in chapter 3, part 8 of both the RTI Act and the IP Act.

² In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

³ See section 81 of the RTI Act and section 95 of the IP Act.

⁴ As deemed decisions are taken to have been made by the principal officer or Minister.



Office of the Information Commissioner Queensland

For example, an agency gives the applicant a decision that documents are unlocatable because they searched location A, B, C and couldn't find them. The applicant seeks internal review of the reviewable decision saying the agency should have searched in locations X, Y, and Z. The agency can deal with these search issues because they are part of a reviewable decision.

The agency could also deal with search issues at internal review if they made a decision refusing access to three documents because they were exempt, and the applicant applies for internal review of the reviewable refusal of access decision, but also says there should be *four* documents and the agency didn't find the other one. Because the applicant applied for review of a reviewable decision, the agency can also deal with the search issue, even though it doesn't relate specifically to the decision.

However, if no review of a reviewable decision has been sought, then issues of insufficient searching **cannot** be dealt with as an internal review. For example, the agency refuses access to three documents because they are exempt. The applicant accepts the refusal of access decision but says there should have been two more documents the agency didn't find. Because they are not applying to have the reviewable decision reviewed, the agency cannot deal with the search issues as an internal review.

Initial decisions made by the principal officer

If an initial decision was made by the agency's principal officer it **cannot** be internally reviewed, even if it is sent to an officer of another agency. If the initial decision you are looking at was made by the principal officer you **must** stop working on it and inform the applicant that their only option is to seek an external review from the Office of the Information Commissioner.

Note

Standard decision letter templates will generally refer to both internal and external review rights. Where agencies use the standard decision letter template for decisions made by the principal officer, it is not uncommon for applicants to be misinformed about their review rights.

You should also advise the appropriate officers of the mistake, to help ensure they do not incorrectly use the standard decision letter template in the future. It is very important that applicants are given correct information about their review rights.

Internal review process

Applications for internal review

An application for internal review must:⁵

- be made in writing⁶

⁵ See section 82 of the RTI Act and section 96 of the IP Act.

⁶ This does not have to be a formal request, it can be an informal request, sent in response to the decision letter.



Office of the Information Commissioner
Queensland

- provide an address of the applicant to which written notices can be sent
- be made within 20 business days from the date stated on the notice of decision⁷ or a further time permitted by the agency; and
- be lodged at an office of the agency.

Note

The 20 business day period starts on the *date of the written notice* not the date the applicant receives the written notice.

There is no fee for internal review applications. An applicant does not need to supply evidence of identity or authority if it was provided with the initial application.

Who can make an internal review decision?

An internal review must not be conducted by the original decision maker and it must be conducted by an officer who is no less senior than the original decision maker.⁸

Note

It is important to ensure the decision maker has the appropriate delegation from the principal officer or Minister to make an internal review decision. See the Guideline: [Who can make decisions under the RTI Act and the IP Act⁹](#) for further guidance.

Processing an internal review application

The officer conducting the internal review must make a new decision as if the reviewable decision had not been made.¹⁰ This means the reviewing officer must consider all relevant documents again and decide to release documents unless it is contrary to the public interest to do so (keeping in mind the pro-disclosure bias required by the legislation).

Decision makers should also note that an applicant is not entitled to ask for access to different or to more documents on review.

Timeframes

An agency must decide an internal review application *as soon as practicable*.¹¹

⁷ Unless the agency allows further time (whether before or after the end of the 20 business days) as per section 82(c) of the RTI Act and section 96(c) of the IP Act.

⁸ See section 80(3) of the RTI Act and section 94(3) of the IP Act.

⁹ www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/who-can-make-decisions-under-the-rti-act-and-the-ip-act

¹⁰ See section 80(2) of the RTI Act and section 94(2) of the IP Act.

¹¹ See section 83(1) of the RTI Act and section 97(1) of the IP Act.



Office of the Information Commissioner Queensland

If the applicant is not notified of a decision within 20 business days of their internal review application being made then the agency is deemed to have affirmed the original decision.¹²

This time cannot be extended, even with the agreement of the applicant, so it is important that internal review applications are allocated and processed promptly.

Additional documents

If the internal review decision maker locates more documents that were not processed as part of the original application these will also need to be considered. This can occur when an applicant raises search issues as part of their internal review.

Third party consultations

There is no need to consult again with a consulted third party if the decision on the relevant documents does not change.

However, if the internal review officer makes a decision to release documents contrary to the view provided by the third party then they must be provided with a prescribed written notice and access to the document must be deferred.

If additional information is being considered for release at internal review, and its release would reasonably be expected to be of concern to a third party, then they must be consulted as part of the internal review.¹³ As noted above, there is no extra time allowed for consultation at internal review.

Notice of decision

The agency must give the applicant a prescribed written notice¹⁴ of the decision as soon as practicable after a decision is made (or taken to be made if the decision was not made within the 20 business day period).

If the internal review decision is reviewable then the applicant or a third party may apply for an external review to the Information Commissioner if they are not happy with it.

Disclosure log

This section only applies to internal reviews under the RTI Act. If access to additional documents is granted on internal review the Disclosure Log rules apply¹⁵: if the documents do not contain the applicant's personal information departments and Ministers must, and other agencies should, consider if the documents can be placed on the Disclosure Log.

¹² See section 83(2) of the RTI Act and section 97(2) of the IP Act.

¹³ As per section 37 of the RTI Act and section 56 of the IP Act.

¹⁴ See section 191 of the RTI Act and section 199 of the IP Act for the requirements of a prescribed written notice.

¹⁵ Chapter 3, part 7 of both the RTI Act and the IP Act.



Office of the Information Commissioner
Queensland

See the OIC's guidelines on [Disclosure Logs](#) for more information.

For additional information and assistance please 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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