



Interpreting the Legislation – *Right to Information Act 2009* and *Information Privacy Act 2009*

Which Act applies?

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1.0 Applications under the *Information Privacy Act 2009*

1.1 Section 40

Section 40 of the *Information Privacy Act 2009* (Qld) (**IP Act**) provides a right for an individual to be given access to documents of an agency or a Minister to the extent that those documents contain the applicant's personal information.

Applications for other documents will need to be made under the *Right to Information Act 2009* (Qld) (**RTI Act**). Applications that are not made by an *individual* (for example, made by a company) must be made under the RTI Act.

Section 40 gives an individual the right to apply for any document that contains at least some of their personal information. The presence of other information in the document does not mean that they cannot be considered under the IP Act. Nothing in section 40 requires those documents to contain solely the applicant's personal information.

Document means an entire document (eg a report or a letter) comprised of pages. If a document contains no personal information of the applicant, it will be outside the scope of the IP Act.

Example

An applicant applies for 'my employment file'. On the employment file is a copy of a report into the efficiency of the business unit's processes, practices and policies. It contains no personal information



of the applicant – therefore there is no right of access to it under the IP Act.

1.2 ***Determining if an application can be decided under the IP Act***

When determining whether an application should be processed under the IP Act it is important to consider what the applicant is actually asking for. Applicants will generally not be familiar with how agency files are organised so decision makers should use common sense based on the understanding of an average person and the words used in the application. Remember the broad definition of personal information and interpret the application accordingly.

It may be helpful to consider if the applicant would reasonably expect that their application would only be for information about him or herself. Decision makers should also consider which description the applicant has indicated most closely describes their application for access in section 1 of the approved form.

Example

An application for *'my medical records'* or *'my employment file'* would generally be an IP Act application. The focus is on information about the applicant regardless of the fact that the documents may contain other information or that there may be documents containing no personal information on the files or in the record.

2.0 **Mutual Personal Information**

Personal information of an applicant will also include mutual personal information. Mutual personal information is information that is the personal information of more than one individual. The fact that information is the personal information of one individual will not stop it from also being the personal information of another individual.

For example:

- the fact that Nurse Bob treated Applicant Joe is Joe's personal information as well as Nurse Bob's personal information
- the complaint made by Fred about Applicant Charlie is Charlie's personal information as well as Complainant Fred's personal information
- a professional opinion given by Doctor Leo about Applicant Meg is Meg's personal information as well as Doctor Leo's personal information



- that Inspector Gary is investigating Applicant Barney is Applicant Barney's personal information as well as Inspector Gary's personal information.

Examples

- An application for *'documents relating to the complaint made about me'* would generally be an IP Act application, because it is focussed on personal information about the applicant. Complaints made about the applicant, opinions given in interviews by fellow employees, and findings of the investigation are all the personal information of the applicant.
- An application for *'documents relating to my application for a job'* could be an IP Act application or an RTI Act application, depending on, for example, whether the applicant only wants to know how they were rated or they want to know how all the other applicants were rated.
- An application for *'documents about what the department did about the complaint I made about my neighbour'* would most likely be an application under the RTI Act, as the applicant is seeking to find out what the department did about the complaint. On its face, the application is for information about the department's actions and about the neighbour (even though there may be some documents which contain small amounts of the applicant's personal information).

3.0 Application cannot be made under the IP Act if it is for more than just personal information

An individual can only apply under the IP Act for documents which contain their personal information. If an individual applies under the IP Act for documents that do not contain their personal information there are steps the agency must take. These are set out in section 54 of the IP Act.

Example

An applicant who was unsuccessful in obtaining a job within the agency applies to the agency under the IP Act for *'documents which relate to the process followed by the agency in selecting staff'*. On its face, this is clearly an application for more than just documents which would contain the applicant's personal information, and so should be made under the RTI Act.

The processes set out in section 54 *must* be followed. For detailed guidance see the Guideline: *Applications Made Under the Wrong Act*.



Section 54(5)(b) of the IP Act gives an agency or Minister the power to decide that an application purportedly made under the IP Act cannot be made under the IP Act. This decision:

- can only be made following the specific process for contacting the applicant as set out in section 54; and
- is a reviewable decision under the definition of *reviewable decision* contained in schedule 5 of the IP Act.

4.0 Application made under the RTI Act *could* have been made under the IP Act

If an individual makes an application under the RTI Act which could have been made under the IP Act, ie it is only for documents that will contain the applicant's personal information, the process outlined in section 34 of the RTI Act must be followed.

The agency must contact the applicant within 15 business days of receiving the application and advise them that the application could have been made under the IP Act without any application fee or processing charge being payable. The applicant may then ask for the application to be dealt with under the IP Act¹ or confirm it as an RTI Act application. If the applicant does not respond then the application continues to be dealt with under the RTI Act.

If the applicant asks for the application to be dealt with under the IP Act then if there are any documents that do not contain the applicant's personal information they would not be able to be considered as part of the application. For more information see *Applications Made Under the Wrong Act*.

For additional information and assistance please refer to the following Guidelines: *What is personal information?* and *Dealing with an IP application which is not limited to personal information* and the *What is personal information - checklist*, or 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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¹ The application fee must then be refunded as soon as practicable.