



Information Sheet

Right to Information Act 2009 and Information Privacy Act 2009

I want to know who is listed as my birth father in agency adoption records

This Information Sheet is intended to provide guidance to people adopted in Queensland who want to know who is recorded as their birth father in their adoption records.

Accessing the information administratively from the Department

The Department of Child Safety, Youth and Women (the Department) holds Queensland's adoption records and has an administrative scheme for accessing them. The Department may also be able to authorise you to obtain information about, or a copy of, your pre-adoption birth certificate from Births, Deaths, and Marriages.

Access to adoption information is managed by the Department's Adoption Services unit. They can provide information and copies of relevant documents, subject to the provisions of the *Adoption Act 2009* (the Adoption Act) and any stated wishes of relevant third parties. Specific identifying information about your birth father can be provided to you if:

- he consented to the adoption, or the need for his consent was ruled as not required by a court (i.e. dispensed with)
- he is recorded on the original birth certificate as your father
- records are contained on the file (for example a Statutory Declaration) that demonstrate he accepted paternity
- there is sufficient evidence to satisfy the Department that he is more likely than not to be your biological father.¹

Adoption Services can be contacted on (07) 3097 5100, 1 800 647 983, or ads@communities.qld.gov.au.²

What if I can't access the information through the Department's administrative access scheme?

Every person has the right to make an application under the *Right to Information Act 2009* (RTI Act) or the *Information Privacy Act 2009* (IP Act), and this includes applying for adoption records that contain the name of the person recorded as their birth father by the Department. However, while everyone has the right to apply, if you haven't been able to access this information through the Department's administrative scheme it is highly unlikely that you will be able to access it under the RTI or IP Acts.

¹ Refer to <https://www.qld.gov.au/community/caring-child/adoption/post-adoption-support-services/what-type-information-provided> for more details about what can be provided.

² For more information, refer to <https://www.qld.gov.au/community/caring-child/adoption/post-adoption-support-services/who-request-past-adoptions>



Office of the Information Commissioner
Queensland

Why won't I receive this information if I apply under the RTI Act or IP Act?

The Adoption Act places a strict obligation of confidentiality on anyone involved in its functions or processes. They are not allowed to disclose *protected information*, which includes the named birth father of an adopted person, to anyone—except as provided for in the Adoption Act, and the Department's administrative access scheme already provides the maximum information possible to adopted persons.

The confidentiality obligation under the Adoption Act is recognised by the RTI and IP Acts³, which makes protected information exempt from release⁴.

For this reason, it is extremely unlikely that information relating to the identity of the person named as birth father will be released to you in response to an RTI Act or IP Act application.⁵ This approach has been confirmed by decisions of the Queensland Civil and Administrative Tribunal (**QCAT**)⁶.

Will I receive the information I am seeking on external review?

External review is a process which allows decisions made by agencies under the RTI Act and IP Act to be independently reviewed by the Information Commissioner. If you receive a decision refusing access to information about the person recorded as birth father in agency documents you will be entitled to seek an external review.

When considering your application for external review of this decision, the Information Commissioner must have regard to all relevant laws. As noted above, the disclosure of identifying information about the person named as birth father is exempt information under the RTI and IP Acts.

The Information Commissioner does not have the power to direct an agency to give access to a document containing exempt information.⁷ If an agency has refused you access to the information you are seeking, and the Information Commissioner establishes that it is exempt information, you will not receive that information on external review.

For additional information and assistance, please 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

Published 5 February 2013 and Last Updated 8 November 2018

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

³ See section 12 of schedule 3 of the RTI Act.

⁴ See sections 47(3)(a) and 48 of the RTI Act.

⁵ *7CLV4M and Department of Communities (7CLV4M)*, (Unreported, Queensland Information Commissioner, 21 December 2011)

⁶ *BL v Office of the Information Commissioner, Department of Communities (BL v Office of the Information Commissioner)* [2012] QCATA 149

⁷ See section 105(2) of the RTI Act; paragraph 21 of 7CLV4M.