



Office of the Information Commissioner
Queensland

Model Protocols
for
Queensland Government Departments
on
Reporting to Ministers and Senior Executive on Right to Information and
Information Privacy Applications

1. Purpose

- 1.1. The purpose of these protocols is to provide a performance standard for maintaining the independence of Right to Information and Information Privacy decision-making during briefings of Ministers, ministerial staff and senior executive.

2. Application

- 2.1. These protocols constitute a performance standard under section 131 of the *Right to Information Act 2009 (RTI Act)* that:
- 2.1.1. applies to departments of government declared under section 14 of the *Public Service Act 2008*;
 - 2.1.2. applies to Ministers and ministerial staff members; and
 - 2.1.3. supplements the *Protocols for communication between ministerial staff members and public service employees*.

3. Effective date

- 3.1. These protocols take effect on 15 April 2013.

4. Context and principles

- 4.1. The Queensland Government operates in accordance with the Westminster system of responsible government.
- 4.2. Governments are responsible collectively to the community through the electoral process and are supported by an independent public service. Ministers are responsible individually to Parliament for the administration of their portfolios.
- 4.3. Directors-General are responsible for the delivery of their departments' services and are accountable ultimately to the Premier, although they report to their responsible Minister on a day-to-day basis.
- 4.4. Departments are responsible for giving independent and apolitical advice to assist the government and the Minister with decision-making.
- 4.5. The RTI Act and *Information Privacy Act 2009 (IP Act)* are transparency and accountability measures. Directors-General are responsible for decision-making on access applications made to their Department.

- 4.6. In practice, Directors-General usually delegate RTI and IP decision-making powers to departmental officers.¹ Even when powers are delegated, Directors-General will need to be kept informed of significant decisions.
- 4.7. Ministers are entitled to be briefed on access applications² made to the Department under the RTI or IP Acts insofar as they are relevant to the Minister's responsibilities. The privacy obligations in the IP Act concerning storage, use and disclosure of such information apply to the Minister.
- 4.8. Under the RTI and IP Acts, it is an offence to direct a person to make a decision the person believes is not the decision that should be made.³ It is also an offence to direct an employee or officer of the agency or Minister to act in a way contrary to the legislative requirements.⁴
- 4.9. The RTI and IP Acts expressly set out how an access application is to be processed and the grounds on which decisions to give or refuse access must be based.⁵ The RTI Act explicitly states that decision-makers are required not to take account of factors such as possible embarrassment to the Government or loss of confidence in the Government.⁶

5. Protocols

- 5.1. Ministers and Directors-General may establish reporting processes for being informed about RTI and IP access applications.

- 5.2. If reporting processes are required, the scope and purpose should be confirmed in a written policy.
- 5.3. Where processes require particular types of applications to be reported on, the criteria for identifying applications should be clearly defined.
- 5.4. Generally, reporting would be limited to applications where giving access to information will require the Minister or Department to prepare for public debate.
- 5.5. The written policy and any related correspondence should make it clear that the reports are for information only and note the offences relating to giving direction in the RTI and IP Acts.
- 5.6. Reports should be made to the Director-General. The Director-General should determine further recipients of the report on a need-to-know basis consistent with the IP Act.⁷
- 5.7. The content of the report should be limited to procedural matters such as statutory timeframes, the scope of the application, and a summary of the factors favouring disclosure or non-disclosure of the information in the public interest.
- 5.8. Any inspection of documents containing sensitive information, such as personal health information, should be limited, especially where such documents are not considered by the decision-maker as suitable for release to the applicant.
- 5.9. If further background briefing is required on the operational issues subject to the access application, the Minister or Director-General should request separate briefing on these matters from the responsible operational area through the usual internal and Ministerial briefing systems.

¹ The Premier advised Parliament on 13 November 2012 that all Ministers have directed a person within their Departments to deal with access or amendment applications made to the Minister.

² Briefs could also be provided on related matters such as internal and external reviews or appeals.

³ See sections 30 and 175(1) of the RTI Act and sections 50 and 184(1) of the IP Act.

⁴ See section 175(3) of the RTI Act and 184(3) of the IP Act.

⁵ See sections 44 and 47 of the RTI Act and sections 64 and 67 of the IP Act.

⁶ See Schedule 4, Part 1 of the RTI Act: Factors irrelevant to deciding the public interest.

⁷ Information Privacy Principles 8, 9 and 10 and National Privacy Principle 2 deal with secondary uses of personal information held by agencies. Departmental RTI and IP reporting processes will need to comply with the relevant principles.

- 5.10. In circumstances where the Director-General disagrees with a proposed decision, the Director-General should make the decision.
- 5.11. In the interests of open discussions of public affairs, the Director-General should consider exercising the discretion to release information even where the information could lawfully be withheld.⁸
- 5.12. Proper records of RTI and IP reports and any related correspondence or discussion must be made and kept in accordance with section 7 of the *Public Records Act 2002*.
- 5.13. If a Department has a policy on RTI and IP reporting processes, the policy must be made available under section 20 of the RTI Act. In the interests of transparency, the policy should be published on the Department's website.
- 5.14. RTI and IP reports should be managed separately from information retrieval processes and liaison between RTI and IP units and operational custodians of information. Requests for information from operational areas should include:
- 5.14.1. guidance on the pro-disclosure bias, relevant and irrelevant considerations and exemptions;
 - 5.14.2. an invitation to provide additional contextual information to ensure accurate interpretation;
 - 5.14.3. a prompt to consider providing access to the information administratively; and
 - 5.14.4. a clear statement about the offences relating to directions in the RTI and IP Acts.
- 5.15. Processes for RTI and IP reports must be managed in a manner which does not impact on statutory timeframes. RTI and IP reporting is not a sound basis on which to ask an applicant for further time to consider an application and make a decision about access.

6. Support to public service employees and ministerial staff members

- 6.1. Directors-General should provide ongoing support to staff (including reinforcing among senior executive their responsibility to provide support to their staff) to create a culture of openness and respect for the independence of RTI and IP decision-makers.
- 6.2. Public service employees should initially discuss any perceived breach of these protocols with their Senior Officer or Director-General. The Director-General should, if necessary, raise significant concerns with the Minister.
- 6.3. Ministerial staff members should initially discuss any perceived breach of these protocols with their Principal Adviser. The Principal Adviser should refer significant concerns where necessary to the Director-General.
- 6.4. If a public service employee or ministerial staff member is unable to raise their concerns within the relevant line of management, or is not satisfied with the response, the employee or staff member can raise the issue with another senior manager or seek advice on other internal or external integrity processes.

7. Assistance

- 7.1. The Office of the Information Commissioner offers an enquiry service on the operation and application of Queensland's Right to Information and Information Privacy legislation:
- Telephone: (07) 3234 7373
 - Fax: (07) 3405 1122
 - Email: enquiries@oic.qld.gov.au

⁸ See section 44(4) of the RTI Act and section 64(4) of the IP Act.