Office of the Information Commissioner
Queensland

# Information Sheet

Information Sheet – *Right to Information Act 2009* and *Information Privacy Act 2009*

## What to expect when you apply for documents

This Information Sheet will give you an overview of what to expect after you have made an application under the *Right to Information Act 2009* (Qld) (RTI Act) or the *Information Privacy Act 2009* (Qld) (IP Act).[1]

**Note**

This resource provides general information only. Contact the agency[2] you applied to if you have questions about your specific application.

### If I apply, will I get access?

You may not be given access to everything; it depends what you apply for. Generally, you will not get access to other people's personal information, to the name of someone who made a complaint about you, or to information about an active investigation. Information that is subject to legal privilege or confidentiality or relates to a Crime and Corruption investigation is also unlikely to be released.

These Information Sheets explain more:

- Applying for complaint documents
- Applying for medical records of a person who is deceased
- Applying for workplace investigation documents
- Crime and Corruption Commission investigation - a guide for applicants

The reason you may not get access to information is because the Acts set out specific kinds of information that is not released, either because it is exempt or because releasing it would be contrary to the public interest. Please refer to *What is Exempt Information* and *What is the Public Interest* for more information.

### Contact from the agency

The agency is not required to acknowledge receipt of your application, which means you may not be contacted by the agency if your application is valid and able to be processed.

However, the agency should contact you if there are problems with your application, for example if there's something they need you to fix, they need more

[1] If you have been advised that your application is not valid or noncompliant then you should discuss this with the agency you applied to.
[2] In this information sheet all references to an 'agency' include Ministers, unless otherwise specified.

information, or they need to clarify anything about the documents you want to access. If you want to confirm your application has been received and that there are no issues with it, you will need to contact the RTI Unit directly.

The OIC Enquiries Service does **not** have access to your application but they may be able to assist you in contacting the relevant agency's RTI Unit. The Enquiries Service can be contacted on 07 3234 7373 or by emailing enquiries@oic.qld.gov.au.

## How long will your application take to process?

When the agency receives your application, a 25 business day processing period starts. It does not include weekends or public holidays. If your application meets all the requirements of the Act, the agency will process it and give you a decision.

If your application does not meet the requirements of the Act, the agency will contact you and explain what you need to do to make it compliant. Once your application meets the Act's requirements, the processing period will restart so that the agency can process your application and give you a decision.

The Acts also give the agency set periods of extra time, for example, if they have to consult with a third party, or, for RTI applications, when they issue a charges estimate notice (explained below).

### Extensions of time

At any time before their time runs out, the agency is allowed to ask you for an extension. They can keep working on your application unless you refuse the request. If you don't want to give the agency extra time, you need to tell the agency, preferably in writing. An agency can ask for more than one extension, however you do not have to agree, even if you agreed to the first extension.

Your review rights will not be impacted by the agency having extra time to work on your application.

## How much will it cost?

*Processing charges*

There are no processing charges for IP Act applications. If you applied under the RTI Act there may be processing charges, but they won't apply for any work on documents that contain your personal information.

Processing charges apply for the time taken by the agency to process your application, for example, the time they spend searching for or retrieving the documents and making a decision on your application.

If the agency spends less than 5 hours working on your application the processing charges will be waived.

*Access charges*

There may be access charges under both the RTI Act and the IP Act. These are the costs of giving access to the documents, usually standard photocopying costs, but they can be more specialised, such as the costs of duplicating large maps or transcribing audio recordings. The access charges will not apply if you choose to get your copies electronically, such as on a CD or by email—but depending on how large the files are, the agency may not be able to email them to you.

*Financial hardship*

If you hold one of the specific concession cards named in the Acts you, can have the processing and access charges waived on financial hardship grounds. For more information refer to the Information Sheet *Applying for financial hardship as an individual*.

If you are a non-profit organisation in financial hardship you could consider applying for financial hardship status from the Information Commissioner. See *How to Apply for financial hardship – non-profits* for more information.

## Charges Estimate Notice (CEN)

If you applied under the RTI Act, the agency will give you a written *estimate* of how much your application is likely to cost. This is called a 'charges estimate notice' or CEN and your application cannot proceed until you accept it.

## Do I need to respond to a CEN?

When you receive the CEN you can agree to accept the estimated charges. If you don't want to do that you can:

- narrow the scope of your application to reduce the estimated charges
- withdraw your application; or
- if you hold a concession card recognised by the Acts, apply for a waiver of the charges.

The agency will usually give you a schedule of documents (see below) with the CEN, which may help you to identify documents you could decide to remove from your application. This could reduce the scope of your application and possibly the amount of the estimated charge. It can be important to talk to the agency during this process.

If you narrow or reduce the scope of your application, or successfully apply for financial hardship, the agency will give you a second CEN. When you receive the second CEN you must either accept it, even if it is for zero dollars, or withdraw your application.

An agency can only issue two CENs so it is important to ensure you complete your discussions with the agency about reducing the scope of your application before the second CEN is issued.

The final amount you will need to pay when your application is complete will not be more than the amount quoted in the CEN. You must pay the processing and/or access charges before any documents will be released to you and you have to pay them even if you are not given access to *any* documents.

## Schedule of documents

If you applied under the RTI Act, the agency must give you a schedule of documents before the end of the processing period, unless you agree not to receive one. The schedule of documents sets out the general classes of documents the agency has found, for example, emails, plans etc.

The agency does not have to give you a schedule of documents if you applied under the IP Act.

## Third party consultation

If an agency intends to release information that would concern a third party, the Acts require the agency to take reasonable steps to obtain their views. The third party is only consulted about two things:

- is the document one to which the RTI Act/IP Act does not apply; and
- is the information exempt or contrary to the public interest to release?

If a third party objects to release, the agency can still decide to give you access. However, the agency must delay giving you a copy of the document that contains the information so that the third party has a chance to seek a review. The agency should provide you with more detailed information if this occurs.

## Decision notice and statement of reasons

When the agency has finished processing your application, it should send you a letter setting out its decision. Generally speaking, if a decision refuses access to a document in full or in part, the decision notice must state the reasons for the decision to refuse access and set out your rights to seek a review of the decision.

Decisions for access applications under the IP Act may also refer to sections of the RTI Act. This is because the IP Act says that an agency may refuse access using the same reasons for refusal set out in the RTI Act.

## Review rights

The Acts give you the right to seek review of certain decisions under the legislation. An overview of these review rights, including internal review and external review, are outlined in *Explaining your review rights – a guide for applicants*.

## Deemed decision

If the agency does not give you a decision in the time allowed by the legislation this is called a 'deemed decision', as the agency is deemed to have refused you access to all the documents you applied for.

If this happens, you only have the right to apply to the OIC for an external review. Sometimes, the agency may ask the Information Commissioner for more time to work on the application. Alternatively, the application may be dealt with by the OIC.

If you applied under the RTI Act and your application went deemed, the agency must refund your application fee.

For additional information and assistance please refer to 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.*