
IPOLA GUIDELINE

Applying the legislation – Right to Information Act 2009

Disclosure logs

This guide does not reflect the current law.

It highlights important changes to the *Right to Information Act 2009*.

This guide does not constitute legal advice and is general in nature only. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

Section 78A of the *Right to Information Act 2009* (Qld) (**RTI Act**) provides for documents released by an agency¹ or Minister in response to an access application under the RTI Act to be included on a disclosure log.²

Disclosure logs are intended to prevent multiple applications on the same subject and increase the flow of information to the community. They are part of an agency's website that contains documents—or information about how to get copies of them—that have been released under an RTI application.

When an access application is finalised, and the applicant has accessed the documents or when an applicant fails to access the documents within the access period, the documents may be uploaded to the disclosure log, subject to some exceptions.

Well-designed disclosure logs which are current, complete, and accurate allow people to access information easily, quickly, and freely, and assist with achieving the goal of applying under the RTI Act being a last resort. This can save money and effort for agencies and the community.

Documents that contain the applicant's personal information

Section 78A does not apply to documents that contain an *applicant's* personal information.³ This means that if an applicant's personal information appears anywhere in a document, the document should not be placed on the agency

¹ Disclosure log obligations do not apply to a prescribed entity under section 16(4). In this guideline, references to an agency include a Minister unless otherwise specified.

² Documents released by a Minister are included in the department's disclosure log.

³ Section 78A(1).



disclosure log. Details on what should be removed from documents placed on a disclosure log are set out below.

A *document* is a single item which may be made up of multiple pages, e.g., a multiple page letter or report is a single document. *Personal information* is any information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.⁴

OIC's audit of departmental disclosure logs

The Office of the Information Commissioner audited departmental disclosure logs and in 2020 made several recommendations.⁵ Many of these recommendations apply to all agency disclosure logs, including that disclosure logs should be easy to find, easy to use, up-to-date, and useful. They should be readily locatable on websites, and integrate browse, search and/or filter functions. Information should be published promptly and be kept complete and accurate.

Information that must not be included in a disclosure log

Section 78B(1) of the RTI Act requires an agency to remove any information (including an individual's name) from material intended for publication on the disclosure log that:

- is prevented by law from publication
- may be defamatory
- would unreasonably invade an individual's privacy if it was included in the disclosure log
- is, or allows to be ascertained, information—
 - of a confidential nature that was communicated in confidence by a person other than the agency;⁶ or
 - that is protected from disclosure under a contract⁷; or
- would cause substantial harm to an entity if it was included in the disclosure log.

Where documents intended for the disclosure log contain this kind of information, 78B(1) requires agencies to either remove the information or not publish the document. Good recordkeeping is an important part of complying with section 78B(1), and agencies need to ensure they record their reasons for not publishing documents on the disclosure log or for redacting information. If an agency commonly decides not to publish certain information in its disclosure log, they should explain this practice in the disclosure log.

Where applications regularly result in the same kinds of redactions/non-publication under section 78B(1), it may be more efficient to develop a pre-

⁴ Section 12 of the IP Act

⁵ Read the entire report here: https://www.oic.qld.gov.au/__data/assets/pdf_file/0003/43653/Disclosure-Log-Audit-report-FINAL.pdf.

⁶ Guidance regarding whether information was communicated in confidence is provided in the context of the breach of confidence exemption within the RTI Act see the Guideline *Breach of confidence*.

⁷ This provision goes further than the exempt information provision under section 8 of schedule 3 of the RTI Act, which is limited to equitable confidentiality and does not include contractual confidentiality. For further information about the exempt information provision, see the Guideline *Breach of confidence*.

publication checklist, identifying the common kinds of information that need to be removed.

Blank pages

There is no public benefit in publishing blank pages. If refusal of access and/or redaction under 78B(1) removes all information from a page or document, agencies do not need to publish them.

To avoid unnecessary queries, agencies should consider including information on their disclosure log pages explaining that where pages are blank as a result of decision-making processes, these pages are not included on the disclosure log.

What documents can be included in the disclosure log?

Documents which—

- an agency has decided to give access to in response to a formal application under the RTI Act
- do not include personal information of the applicant; and
- were accessed by the applicant within the access period⁸

—may be included in their disclosure log, if reasonably practicable.

If it is not reasonably practicable to include the document itself (because, for example, the electronic version of the document is too large to be published on the agency's website) then details identifying the document and information about how that document can be accessed may instead be stated.

When has the applicant had access?

The RTI Act allows an agency to give access by providing the applicant with a copy of the documents. If the documents are:

- Sent by email⁹—the documents are generally accessed when the email is received by the applicant's information system.¹⁰ If you use a delivery receipt or the email does not bounce back as undeliverable that should confirm the email was received.
- Collected by the applicant or their agent from your office—the applicant will have accessed them on the day they are collected.
- Sent by post—the applicant is deemed to have accessed the document at the time in which the letter would be delivered in the ordinary course of post.¹¹ Australia Post provides information about standard delivery times on its website.
- Inspected—the applicant has generally accessed them when they have completed their inspection.

⁸ See section 69 of the RTI Act for a definition of *access period*. To access the documents, the applicant will have paid any applicable processing and access charges.

⁹ This also applies to documents sent by facsimile.

¹⁰ Section 24 of the *Electronic Transactions (Queensland) Act 2001*.

¹¹ Section 39A of the *Acts Interpretation Act 1951*.



Deferred access

Where access to documents is deferred due to third party review rights, those documents cannot be placed on the disclosure log until access is no longer deferred and the timeframe for applicant access has passed.

Access by inspection

If access was only given by inspection, the documents may contain information that must not be included in the disclosure log under section 78B(1). It will generally depend on why access was by inspection only.

- If access by inspection was given due to a third party's copyright, it will not be appropriate to place the document on the disclosure log.
- If the applicant agreed to inspection only access because, for example, it reduced the impact on third party privacy or removed a third party's objection, it is unlikely to be appropriate to place the document on the disclosure log.
- If a document was considered too fragile to copy and the applicant was therefore given access by inspection (without touching the document), it may not be appropriate to place the document on the disclosure log.
- If giving people who ask to see a document listed on the disclosure log access by inspection would unreasonably interfere with the resources of the agency, it may not be appropriate to place the document on the disclosure log.

Access given on review

If an agency decides to give access to a document on internal review and the applicant accesses the document within the access period, section 78A(1) allows the document to be placed on the disclosure log.¹²

There is no obligation on an agency to place documents released as a result of an external review on its disclosure log. However, the agency may choose to do so, as long as the documents do not contain the applicant's personal information or information of a kind listed in section 78B.

If documents are not accessed by the applicant within the access period

If an agency decides to give access to a document that does not include the personal information of the applicant, but the applicant does not access the document within the access period, the agency may include the following information in the disclosure log:

- details identifying the document
- information about how the document may be accessed; and
- any applicable charges¹³

¹² As long as it does not contain the personal information of the applicant and subject to the limitations in section 78B of the RTI Act.

¹³ Section 78A(4) of the RTI Act



Any person who pays the appropriate charges can access that document. The document itself can then be included in the disclosure log, subject to the requirements of section 78B¹⁴. No further fees for that document can be charged if a person seeks access via the disclosure log.

Removing information from the Disclosure Log

The RTI Act does not specify how long information or documents must be kept on a disclosure log. Under the General Retention and Disposal Schedule issued by Queensland State Archives, RTI application documents have a set retention period.

Generally, the application details should remain on the disclosure log until the RTI processing documents can be disposed of under the relevant Retention and Disposal Schedule.

Agencies will need to develop their own procedures for reviewing and removing documents from the disclosure log. Unless there is a good reason to remove them, agencies should continue leaving them in place until the details are removed.

However, if documents are removed from the disclosure log, an electronic copy of the documents should continue to be available by contacting the RTI Unit until the application details are removed from disclosure logs.

For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

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¹⁴ Section 78A(4) of the RTI Act