Office of the Information Commissioner
Queensland

IPOLA

IPOLA GUIDELINE

Applying the legislation – Right to Information Act 2009

Assessing the terms of an access application

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.

1.0 Overview

Sections 24(2)(b) and 78E(4)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) state that an application for access or amendment of personal information must give sufficient information concerning the document to enable the agency[1] to identify the document.

This means applicants must describe the documents they want to access or amend clearly enough to allow the decision-maker to

- identify the documents and
- conduct searches for them. [2]

However, applicants are not expected to know how agency documents are stored, created, or named, or what kinds of documents agencies produce. Understanding the applicant's meaning should not be approached in the same way as interpreting an Act; if there are ambiguities or the scope is unclear, decision makers should seek clarification from the applicant.[3]

Decision makers must assist applicants, most of whom will not be familiar with agency documents and record keeping systems. They must provide advice and help to the extent it would be reasonable to expect them to do so, to help the applicant to make their application in a form which rectifies any scope issues.[4]

[1] In this guideline, references to an agency in this guideline include a Minister unless otherwise specified.
[2] *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 (***Cannon***) at [8] considering the equivalent provision of the now repealed *Freedom of Information Act 1992* (Qld)*; Lonsdale and James Cook University* [2015] QICmr 34 (15 December 2015) at [9].
[3] *Cannon* at [10]-[12].
[4] Section 33(7) and 78K(7) of the RTI Act.

Conversely, applicants have a responsibility to be clear and precise, and to work with the decision maker to make their application compliant.

If the application is non-compliant , decision makers must first make reasonable efforts to contact the applicant within 15 business days from receiving it to explain how their application does not comply with the requirements.[5] They must give the applicant a reasonable opportunity to make the application compliant,[6] This may include giving sufficient information concerning the requested documents to enable them to be identified.

Working with the applicant

An application to access documents or to amend personal information in a document which is non-compliant because the scope is unclear must not be approached in the same way as non-compliance on purely technical grounds, e.g., no application fee paid or no ID provided.

The examples provided in this guideline are just that: examples. Each application and the way it is written must be approached on its own merits.

If a decision maker cannot identify the documents an applicant is seeking, a phone call or, if telephoning is not practicable, a less-formal email will be far more useful to both decision maker and applicant than moving straight to a formal non-compliance letter.

A conversation can allow questions to be asked, allow an applicant to explain what they want, and allow context and clarification which could assist the decision maker in understanding the documents being sought.

Any agreed alteration to the scope should be confirmed in writing, but an initial call can prevent significant and potentially unnecessary work.

2.0 Where the scope is too broad (versus too big)

Where the scope of an application is too broad, it may not comply with section 24(2)(b) or 78E(4)(b) of the RTI Act.

An application that is too broad, means specific documents cannot be identified. An application that is *too big*, means the volume of documents is so large it may trigger the refusal to deal provisions[7] because it diverts agency resources. Being too big is not, on its own, a ground of non-compliance but being too broad is.

[5] Section 33(2) and 78K(2) of the RTI Act.
[6] Section 33(3) and 78K(3) of the RTI Act.
[7] Section 78N(1)(b) of the RTI Act.

3.0 Where the scope is not specific enough

The specific recordkeeping and document management systems of the agency will be relevant when determining whether or not an application sufficiently describes the documents.[8]

Where an agency is large and decentralised, applicants may need to include additional information (e.g., geographical locations, relevant reference numbers, names of business units or agency officers) in their scope to make it compliant and allow the agency to identify the documents and undertake searches.

Example

'All documents relating to my interactions with agency officers' may be a compliant access application where the applicant applies to a small statutory body with only 30 officers and one office.

However, if the same application is made to a large department with multiple regional offices and a decentralised records management system, the application is likely to be non-compliant because the applicant has not provided sufficient information to allow an officer of the agency to identify in which regional office the documents may be located.

4.0 Where the scope includes expansive phrases

4.1 All documents related to [x], directly or indirectly

The inclusion of the words *directly or indirectly* in an application will not automatically make it non-compliant, but they can be a cue to decision makers to carefully consider the scope of the application.

Whether these words make a scope non-specific enough to be non-compliant will often depend on the subject matter. Generally, documents will either relate to the nominated scope of an application or they will not. Decision makers will need to determine if the applicant, in using the words *directly or indirectly*, is attempting to seek access to documents about a subject they have not identified in their application but that they believe is connected to something they have mentioned.[9]

If the subject matter is clear, and all information directly *and* indirectly related to it is limited, the inclusion of the words *directly or indirectly* will generally not make the application non-compliant as the applicant is clearly seeking information only on the nominated subject matter.

[8] *Mewburn and Queensland Police Service* [2014] QICmr 49 (2 December 2014).
[9] *Cannon* at [12].

In *Bade and Gympie Regional Council,*[10] the Information Commissioner found that it was clear from the terms of the access application that the applicant sought documents that:

- comprised formal documents and internal memos
- were created between July 2007 and September 2010; and
- related to an obligation on a party, either directly or indirectly, who had an interest in fulfilling Condition 1.1 of the assessment manager's conditions.

The Council located 29 documents within scope of the application. On review, the Information Commissioner identified that the only obligation which arose rested with a single party and additional documents located were not within the scope of the application as they related to other parties.

In *Bade,* despite the applicant's use of the words *directly or indirectly*, the scope of the application was clear because there was only one obligation to which documents could relate.

Where the subject of the application is not clear or limited, a different outcome is likely. For example, an application for 'all documents related to me, whether directly or indirectly', may raise compliance issues as decision makers cannot ordinarily be expected to determine the nature of an *indirect* connection to an applicant or something specifically nominated by an applicant.[11] While the connection may be apparent to the applicant, if they have not actually described what they are seeking in their application, the application may not be compliant.

4.2 Including, but not limited to

Again, the inclusion of the words *including, but not limited to* in an application will not automatically make it non-compliant, but they can be a cue to decision makers to carefully consider the scope of the application.

Where the words attach to, for example, the type of documents sought, e.g., 'all documents, including, but not limited to, briefing memos, file notes, emails and audio recordings', they raise no issues as 'all documents' already includes the sub-class of listed documents.

However, where they attach to the subject matter of the documents, they have the potential to infinitely expand a scope. For example, where an applicant applies for 'all documents about an agency's actions in North Queensland, including but not limited to investigations into vegetation clearing, noise complaints, and illegal dumping' the inclusion of the phrase effectively makes the scope cover documents about everything the agency has done in North Queensland.

It will be necessary to carefully consider the impact the phrase has on the specifically identified subject matter, and whether its addition creates an

[10] (Unreported, Queensland Information Commissioner, 14 February 2012) (***Bade***).
[11] *Cannon* at [12].

additional class or classes of documents which the decision maker cannot reasonably identify. It will also be relevant to consider the effect it will have on searches.

5.0 Where the scope requires the decision maker to identify the documents

An applicant is not required to provide a list of the specific agency documents they seek to access or amend. The onus is on the agency officers to identify the documents the applicant wants to access, or the documents containing personal information they wish to amend.

Despite this onus, the applicant must write their application clearly enough that the decision maker can use that information (along with their own knowledge of agency operations and processes) to identify which documents are in scope.

As mentioned previously, the agency should take reasonable steps to work with an applicant to clarify scope, and help the applicant to make their application in a compliant form. Also, agencies must not take an overly technical approach when interpreting scope. When searching for and considering documents potentially responsive to an application, some degree of investigation and analysis will always be required.

The more detailed the analysis or investigation required, the more likely the application is non-compliant. For example, an application that requires an agency to make a subjective assessment or independently verify something may require clarification from the applicant.

For example:

- *All documents which show the wrongdoing done to me by the Business Unit.*
- *All evidence to support allegations and comments made about me to the police about the offence I was charged with.*
- *Any files about incidents of serious injury that happened at a specific location* (where 'serious injury' is not a defined term and would require the decision maker to make a value judgement about whether an injury is serious or not).
- Applications with *'if / then'* statements, for example where the applicant states they want access to X documents, unless Situation A exists, in which case they want Y documents (requiring the decision maker to investigate Situation A before they know what the applicant is seeking).

6.0 Where the application seeks answers to questions

The RTI Act creates a right to apply for access to documents. It does not create a right to have questions answered or to have answers to questions extracted from documents.[12] However, in some circumstances, it will be appropriate to treat these kinds of applications as a request for documents containing the answers to those questions. This will only be suitable where, taking into account the nature

[12] *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at [30].

of the questions, it is both possible and reflects the applicant's intentions in framing their application.[13]

In *C64 and Queensland Police Service*[14] the applicant raised concerns about the abbreviations used in a handwritten document. The Commissioner held that the applicant's request for an explanation of the abbreviations amounted to a request for an answer to a question, to which the right of access to documents under the Act did not extend, and it could not be addressed as part of the review.

If it is not suitable to interpret the application as a request for documents, the application will not be compliant with section 24(2)(b). In those circumstances, the decision maker could:

- assist the applicant to rework their scope into an application for documents; or
- direct the applicant to the relevant part of the agency to have their questions answered.

7.0 Where the application is not for documents

Applications must be for documents.[15] If the applicant applies for:

- access to physical plant or equipment[16]
- a meeting with agency officers
- skin, blood, or other physical specimens
- access to email accounts, servers, or electronic devices rather than the documents they contain; or
- anything else that is clearly not a document

—then the application cannot be made under the Act.

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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[13] Ibid at [32].
[14] [2021] QICmr 43 (17 August 2021) at [14].
[15] Schedule 1 of the *Acts Interpretation Act 1954* (Qld) provides that 'document' (a) means a record or information, however recorded; and (b) includes—(i) a thing on which there is writing; and (ii) a thing on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and (iii) an electronic document.
[16] See for example *Price and Director of Public Prosecutions* (1997) 4 QAR 157 where the applicant sought access to a pair of tinsnips and the Information Commissioner held that they were not a document.