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## IPOLA GUIDELINE

# Applying the legislation – Right to Information Act 2009

## Internal Review

**This guide does not reflect the current law.**

**It highlights important changes to the *Right to Information Act 2009* in a general way.**

**This guide is not legal advice and additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.**

Under the *Right to Information Act 2009* (Qld) (**RTI Act**), applicants have the right to apply to an agency<sup>1</sup> for internal review of a reviewable decision made on their access or amendment application. An internal review must be completed within the internal review processing period.

### Who can apply for internal review

Anyone affected by the reviewable decision can apply for internal review. This will generally be either the applicant or a consulted third party.

### What is a reviewable decision

Schedule 4A of the RTI Act list all reviewable decisions. Some of these cannot be internally reviewed and must be externally reviewed to the Office of the Information Commissioner—they are:<sup>2</sup>

- a decision on an internal review application
- a decision made **personally** by an agency's principal officer or a Minister<sup>3</sup>
- a decision by a healthcare professional appointed under section 30 or 31
- a deemed decision, because it is taken to have been made by the principal officer or Minister.

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<sup>1</sup> In this guideline, references to an agency include a Minister unless otherwise specified.

<sup>2</sup> Section 81 of the RTI Act. See also sections 46 and 78R of the RTI Act regarding deemed decisions.

<sup>3</sup> If the decision maker is acting under delegation or direction of an agency's principal officer or a Minister then an internal review can be made.



Additionally, a decision about the amount of the charge stated in a Charges Estimate Notice and a judicial function decision are not reviewable decisions and cannot be internally or externally reviewed.<sup>4</sup>

Refer to **Review rights under the RTI Act** for more information.

### **Sufficiency of search on internal review**

The reviewable decisions listed in schedule 4A include a decision that purports to, but may not, be a decision on all documents requested in an access application. A review of this type of decision is often referred to as a sufficiency of search review. The question of whether an agency has taken all reasonable steps to identify and locate the documents applied for may be the sole issue in an internal review, or one of a number of reviewable decisions.<sup>5</sup>

### **When is an internal review application compliant?**

Under section 82, an application for internal review must:

- be made in writing
- provide an address to which written notices can be sent; and
- be lodged at an office of the agency within 20 business days from the date stated on the notice of decision or within the further time permitted by the agency.

There is no fee for internal review applications and the applicant does not need to re-supply any evidence of identity or authority required when they made their initial application.

### **Who can make an internal review decision**

An internal review must be decided by an appropriately delegated officer who is no less senior than the original decision maker.<sup>6</sup> It must not be conducted by the original decision maker.

### **Timeframes for internal review**

The internal review applicant must be given an internal review decision by the end of the internal review processing period (**IRPP**).

Section 82A defines the IRPP. It starts at 20 business days from the valid application day and is extended in three circumstances.

The *valid application day* is the day that the agency has an internal review application which complies with section 82.

The three circumstances that extend the IRPP are set out in the table in section 82A and are:

<sup>4</sup> Sections 81 and 86 of the RTI Act regarding amount of charges and schedule 4A regarding judicial function decisions. Section 119(2) of the RTI Act provides that a judicial function decision can be appealed directly to the Queensland Civil and Administrative Tribunal.

<sup>5</sup> Section 80(2)(b) and schedule 4A, section 1(h) of the RTI Act.

<sup>6</sup> See section 80(3) of the RTI Act



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### Postal address only

If the applicant has only provided a postal address to which written notices can be sent by the valid application day, the IRPP is extended by five business days. The agency is entitled to those five business days even if the applicant later provides, for example, an email address. Once the internal review application is compliant with only a postal address, the five business days are locked in.

### Consultation

The IRPP is extended by 10 business days if the agency seeks the views of a concerned third party.

### A request for a further specified period

At any time before the end of the IRPP, the internal review decision maker can ask the applicant for more time to work on the internal review. This is described as a *further specified period*. While there is no limit on the length of a further specified period or how many can be requested, the internal review decision maker must make a decision as soon as possible.<sup>7</sup>

The further specified period needs to be requested in business days. This allows those business days to simply be added to the IRPP.

Requesting a further specified period extends the IRPP by the length of the further specified period unless and until the applicant brings the further specified period to an end by:

- refusing the request; or
- applying for external review.

### Ending the further specified period by refusing the request

If the applicant refuses a request for a further specified period, the IRPP ends when the agency receives their refusal. The applicant can refuse the request at any time, even if they previously agreed to it.

### Ending the further specified period by applying for external review

The applicant can end the further specified period by applying for external review under section 86B, but only if the IRPP has ended.<sup>8</sup> For example, if the IRPP was 35 business days (due to a postal address and consultation), and the agency asked for a further specified period of 10 business days, the applicant could apply for external review on day 36. However, they could not apply for external review on day 34 of the IRPP because the agency was not yet relying on the extra days from the further specified period.

If the applicant ends the further specified period by applying for external review, section 86B(3) provides that the principal officer or Minister is taken to have made a decision affirming the decision under review as if the further specified period

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<sup>7</sup> Section 83(1) of the RTI Act.  
<sup>8</sup> Section 86B(2) of the RTI Act.

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had never been requested, i.e. on the last day of the IRPP. In the example above, the deemed decision would be taken to have been made on day 35 of the IRPP.

Notice of the affirmed decision does **not** need to be given to an internal review applicant who applies for external review under section 86B.

If internal review decision makers think that an applicant may have applied for external review under section 86B, they should contact the Office of the Information Commissioner before sending their internal review decision.

### **Processing an internal review application**

An internal review decision is a fresh decision on the original access application as if the reviewable decision had not been made.<sup>9</sup> This means the internal review decision maker must consider all relevant documents again and decide to release documents unless it is contrary to the public interest to do so (keeping in mind the pro-disclosure bias required by the legislation).

An applicant cannot change their application during the internal review to ask for more or different documents than they originally applied for.

### ***Sufficiency of search issues***

If the internal review involves sufficiency of search, the internal review decision maker needs to assess the searches conducted by the initial decision maker and any additional information provided by the internal review applicant. The internal review decision maker determines if it is necessary to conduct additional searches to identify and locate the documents applied for by the applicant.

### ***Third party consultation***

If it is reasonably practicable, agencies must seek the views of third parties who would reasonably be concerned about the release of information.

If the internal review decision maker locates additional documents during the internal review, they need to consider if there is a need to consult. Third party consultation is only required if the third party would reasonably be concerned about release **and** the internal review decision maker has decided to release it.<sup>10</sup> As noted above, the IRPP is extended by ten business days if it is necessary to consult with a third party or parties.

If the internal review officer makes a decision to release documents contrary to the views of a consulted third party, they must give the third party prescribed written notice of their decision and defer access to the documents pending expiry of the period for seeking external review.

Refer to ***Consulting with a relevant third party*** for more information.

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<sup>9</sup> Section 80(2) of the RTI Act.

<sup>10</sup> As per section 37 of the RTI Act.



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### ***Notice of decision***

Prescribed written notice of the internal review decision must be given to the applicant by the end of the IRPP.<sup>11</sup> If the internal review decision maker is not able to deliver the decision in time, under section 83(3), they must give the internal review applicant notice that the principal officer or Minister is taken to have affirmed the decision.

### **Disclosure log**

If access to additional documents is granted on internal review the Disclosure Log rules apply.<sup>12</sup>

Refer to ***Disclosure Logs*** for more information.

**For additional IPOLA assistance, please contact the IPOLA team by email [IPOLA.Project@oic.qld.gov.au](mailto: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](mailto:enquiries@oic.qld.gov.au)**

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<sup>11</sup> Section 191 sets out the requirements of a prescribed written notice.

<sup>12</sup> Chapter 3, part 7 of the RTI Act.