
IPOLA GUIDELINE

Applying the legislation

GUIDELINE *Right to Information Act 2009*

Applications outside the scope of the Act

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.

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access documents of an agency.¹ It also gives people the right to amend their personal information contained in documents of an agency. These rights are subject to exceptions and limitations in the RTI Act, including specifically excluding some documents and entities from the Act.

What is an agency?

Under the RTI Act, people can apply to agencies for documents of agencies.² *Agency* is defined in section 14 of the RTI Act, and it does not include the entities listed in schedule 2 of the RTI Act. *Document of an agency* is defined in section 12 of the RTI Act and does not include the documents listed in schedule 1 of the RTI Act.³

Refer to [What is an agency](#) and [Documents of an agency and a Minister](#) for more information.

Outside the scope of the Act

Under section 32 and section 78J of the RTI Act, an entity can decide that an access or amendment application is outside the scope of the Act if it:

- is for a document which is a document to which the Act does not apply as set out in schedule 1 of the RTI Act; or
- has been made to an entity to which the Act does not apply, as set out in schedule 2 of the RTI Act.

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

² And to Ministers for documents of Ministers..

³ *Document of a Minister* is defined in section 13 of the RTI Act; it also excludes documents listed in schedule 1.

An application is also outside the scope of the Act if it is made to the Office of the Information Commissioner, Information Commissioner, Right to Information Commissioner, or Privacy Commissioner.

Dealing with an application outside the Act

Under section 32 or 78J, if every document applied for is outside the scope of the Act, the agency must give the applicant a decision that their application is outside the scope of the Act within 25 business days of receiving the application. This time cannot be extended under section 18 of the RTI Act.

Dealing with a mixed application

If an application is for a mix of documents outside the scope of the Act and documents of an agency, the agency must:

- within 25 business days give the applicant a decision under section 32 or 78J on the documents excluded from the Act; and

deal with the rest of the application as an access or amendment application.

Review of a section 32 or 78J decision

With the exception of a judicial function decision⁴, decisions under section 32 or 78J are reviewable decisions⁵. This means they can be internally or externally reviewed. Decisions of the Information Commissioner on external review can be appealed to the Queensland Civil and Administrative Tribunal under section 119(1).

Judicial function decisions can only be appealed to the Queensland Civil and Administrative Tribunal under section 119(2). See information about judicial functions under heading 'Judicial and quasi-judicial entities' below. Also refer to **Review rights under the RTI Act** (guideline under development) for more information.

Documents excluded from the Act

Schedule 1 of the RTI Act lists documents to which the RTI Act does not apply. These documents are not subject to the RTI Act and there is no right to apply for them. An application for access to a schedule 1 document is outside the scope of the RTI Act.

The majority of schedule 1 documents refer to other legislation which sets the parameters of the exclusion. Decision makers should refer to the other legislation to determine if documents are excluded from the RTI Act.

⁴ Definition in schedule 5 of the RTI Act.

⁵ Schedule 4A, sections 1(a) and 2(a) of the RTI Act.

Coronial documents

Under schedule 1, section 8, coronial documents are only excluded from the RTI Act while the Coroner is investigating the death. Once the investigation is finished, the documents can be applied for.

Refer to **Coronial documents** for more information.

Entities excluded from the Act

Schedule 2, part 1 of the RTI Act lists entities which are entirely excluded from the RTI Act.⁶ An application made to an entity listed in schedule 2, part 1 of the RTI Act is outside the scope of the RTI Act.

Schedule 2, part 2 of the RTI Act lists entities which are only excluded in relation to the listed function. An application made to an agency listed in schedule 2, part 2 requires an assessment of the application to determine which functions it relates to. If it relates to a function mentioned in schedule 2, part 2, the application is outside the scope of the RTI Act.

Judicial and quasi-judicial entities

Under schedule 2, part 2, items 1-8 judicial entities are excluded from the RTI Act for their judicial functions, quasi-judicial entities are excluded for their quasi-judicial functions, and tribunals are excluded for both.⁷

Judicial functions

Judicial functions are typically characterised by:⁸

- the settlement of disputes about existing rights and obligations, rather than the determination of future rights and obligations
- settling disputes between identified, rather than hypothetical or abstract, parties; and
- making decisions which are binding upon the parties.

An important factor is whether the function is performed in a judicial manner, ie:

- whether the decision maker applies established legal standards rather than a policy discretion;⁹ and
- whether the decision maker is independent and not subject to direction or control¹⁰.

Other factors which may suggest the exercise of a judicial function are that the:

- body hearing the dispute is bound by the rules of evidence

⁶ Note that, while this does not relate to a GOC's access or amendment obligations under the IP Act, under the IP Act, GOCs are excluded from the application of the privacy principles.

⁷ Schedule 2, part 2, items 1, 3, and 6 of the RTI Act.

⁸ *Huddart Parker and Co Ltd v Moorehead* (1908) 8 CLR 330, Griffith CJ at page 557.

⁹ *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167 at pages 190-1.

¹⁰ *Owen v Menzies & Ors* [2012] QCA 170 at [14]-[16].



- body normally hears disputes in public, unless there is a good reason to do otherwise; and
- parties have a right to legal representation.

Quasi-judicial functions

A quasi-judicial entity possesses some, but not all, of the characteristics of a judicial entity. A body exercising a quasi-judicial function will often:¹¹

- have two parties to proceedings
- conduct hearings in public
- allow parties to have legal representation
- be required to act consistently with the requirements of justice; and
- be required to give reasons for its decision.

However, it may not be bound by the rules of evidence, consist of individuals appointed for a limited term, and/or make recommendations rather than binding decisions.

Review bodies

Some review bodies will be quasi-judicial entities in relation to some of their functions. For example, *T71 and Queensland Police Service*¹² determined that the Information Commissioner is a quasi-judicial entity, citing *Cairns Port Authority v Albietz*.¹³

This is a case where there was already a respondent which could effectively oppose the relief sought by the applicant. The ultimate question was whether that respondent should be allowed access to certain documents. The Information Commissioner's role was quasi-judicial and he was by statute required to be the arbiter between two contending parties.

RTI processing documents

Documents of the holder of an office connected with a quasi-judicial entity in relation to the entity's quasi-judicial functions are excluded from the Act.¹⁴

The Commissioner's delegate found in *T71* that:

- the Information Commissioner is a quasi-judicial entity
- the Information Commissioner's external review functions are quasi-judicial functions; and

¹¹ *Henderson and Legal Practice Committee* (Unreported, Queensland Information Commissioner, 30 November 2011), citing *Re Farnaby and Military Rehabilitation and Compensation Commission* [2007] AATA 1792.

¹² [2022] QICmr 10 (4 March 2022) (*T71*), applying the commentary of Hoeben J in *Carmody v Information Commissioner & Ors* (5) [2018] QCATA 18.

¹³ *Cairns Port Authority v Albietz* [1995] 2 Qd R 470.

¹⁴ Under schedule 2, part 2, item 7 of the RTI Act.



- because the agency's reviewable decision in a prior access application had been externally reviewed, the agency decision-maker who processed that prior access application and made that prior reviewable decision is 'connected with' the Information Commissioner in relation to the Information Commissioner's quasi-judicial functions.

An agency's RTI and IP initial processing documents (as well as any internal review processing documents) are therefore excluded from the relevant Act where they relate to a reviewable decision that has been externally reviewed—this is because those processing documents are 'in relation to' the exercise of the Information Commissioner's quasi-judicial functions.

Government Owned Corporations (GOCs)

Several GOCs are included in schedule 2, part 2. For these GOCs, the RTI Act only applies in relation to their community service obligations. Section 112 of the *Government Owned Corporations Act 1993* (Qld) (**GOC Act**) states that community service obligations are obligations that:

- (a) *are not in the commercial interests of the GOC to perform; and*
- (b) *arise because of a direction, notification or duty to which this section applies; and*
- (c) *do not arise because of the application of the following key principles of corporatisation (and their elements) –*
 - (i) *Principle 3 – Strict accountability for performance;*
 - (ii) *Principle 4 – Competitive neutrality.*

A GOC listed under schedule 2, part 2 of the RTI Act may not have any community service obligations. Any community service obligations a GOC is to perform must be included in the GOC's statement of corporate intent¹⁵Q which is prepared each financial year.¹⁶

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.

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

Published and Last Updated July 2024

¹⁵ Section 113(1) of the GOC Act.

¹⁶ Section 102 of the GOC Act.