
IPOLA GUIDELINE

Applying the legislation – Right to Information Act 2009

Decision notices and statements of reasons

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.

Overview

The *Right to Information Act 2009* (Qld) (**RTI Act**) gives people the right to access documents of an agency,¹ and to amend their personal information contained in documents of an agency, subject to some exceptions and limitations. Under the RTI Act, decision makers must provide notices of, and reasons for, their decisions.

Prescribed written notice of decision

Section 191 of the RTI Act sets out the requirements of a *prescribed written notice*. It must include:

- the decision and reasons for the decision
- the day the decision was made and the name and designation of the decision maker; and
- details of their review rights if the decision is not the decision sought by the applicant.

Section 54 of the RTI Act requires a decision maker to give a prescribed written notice of their decision about an **access application**. It also requires additional information for certain decisions made on an access application, e.g. where documents are released subject to the deletion of information, it must include details of the deletion, the provision under which it was deleted, and reasons for the decision.

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

Section 78T of the RTI Act also requires a decision maker to give a prescribed written notice of their decision about an **amendment application** and if amendment is granted, the decision maker does not need to give reasons for their decision.

A prescribed written notice under section 191 of the RTI Act is required for Deemed decisions² and decisions which neither confirm nor deny the existence of documents³ must comply with section 55 of the RTI Act.

Reasons for the decision

Section 27B of the *Acts Interpretation Act 1954* (Qld) provides that a statement of reasons must set out the findings on material questions of fact and refer to the evidence or other material on which those findings are based.

A material fact is a fact that can affect the outcome of a decision. The findings on the material facts must support the decision being made. Examples of material questions of fact include whether information is personal information or a trade secret, or whether a document was created for the consideration of Cabinet or brought into existence by or for a lawyer for the dominant purpose of providing legal advice.

The evidence for a finding of material fact is the information on which it was based, e.g. how and why the decision maker concluded that information was a trade secret or that a document was created for Cabinet. It can include any legislation or case law relied on.

Exempt or contrary to the public interest information must not be included in a prescribed written notice, so in some circumstances it may only be possible to provide a limited explanation.

A good statement of reasons is transparent and ensures the applicant or consulted third party understand the factors taken into account by the decision maker, enabling them to make an informed decision whether to exercise their review rights. It explains the power to make the decision, the findings of fact, how they were reached, and how the law applies to the facts in this specific case. It explains not just the decision maker's conclusions, but how those conclusions were reached.

The OIC's [Information sheets for applicants](#) may be helpful in explaining why a decision was made and can be included with a decision notice.

Review rights

The rights of review in a decision notice must be the review rights available for that decision, not the general or overall review rights that exist in the RTI Act. For example, if the decision is a healthcare decision, the decision notice should only refer to external review, as a healthcare decision cannot be internally reviewed.

² Under section 46 or 78R of the RTI Act.

³ Refer to *Neither confirm nor deny the existence of documents* for more information.



Information about review rights must include details of how and when they can be exercised, including any time limits that apply.

Refer to [Review rights under the RTI Act](#) and [Explaining your review rights-a guide for applicants](#) for more information.

Including the scope

The scope of an application is the documents an applicant has applied to access or the information and documents an applicant has applied to amend. This should be included in the decision notice.

Ideally the scope should be quoted directly from the application, rather than being paraphrased. However, if the decision maker paraphrases it, e.g. because it is lengthy or unwieldy, they should clearly indicate they are doing so.

If a decision maker is concerned that an applicant may be dissatisfied with a paraphrased scope, they could include the applicant's exact scope in a separate document and refer to it in their decision, e.g. 'The scope of your application is set out in attachment one to this decision.'

If the scope changes during the application, the decision notice should include the original scope, the final scope, and how it was changed, e.g., informally by agreement, narrowed after a charges estimate notice, or reduced after a notice of intention to refuse to deal.

Search information and documents found

It may be helpful to outline the searches conducted in response to the application. This won't always be necessary, e.g. where the applicant seeks specific documents which were all located.

Search information should have enough detail for the applicant to understand the nature and extent of searches that were conducted. For example:

- identify the locations/offices/units/records/databases in which searches were conducted for documents
- explain why those locations/offices etc were selected as appropriate locations to search for the documents
- set out the search terms used for electronic searches; and
- set out the results of the searches (using a schedule if appropriate).

The decision maker should also set out the in-scope documents found in these searches. If searches return out of scope documents, these should not be mentioned.⁴ Mentioning documents that have nothing to do with the application

⁴ E.g. don't say 'Our searches located 300 documents, 27 of which were in scope of your application', say instead, 'Our searches located 27 documents in scope of your application'.

may confuse applicants or lead them to believe the decision maker missed documents, resulting in fruitless applications for review.

When describing the documents found or the searches conducted, it is important not to inadvertently reveal information which is exempt or contrary to the public interest to disclose.

Practical tips

Headings can greatly assist understanding, particularly in long and complex decisions. If the decision deals with multiple categories of information or grounds for refusal, dealing with them separately under clear headings may make the decision easier to understand.

Statement of reasons should be written in plain language that can be readily understood by the average applicant. They should not be unnecessarily legalistic or formal, and where legal language or RTI specific jargon is unavoidable, it should be explained in simple terms.

Decision makers should consider presenting their decision notices in two parts: a main letter that summarises the key information, e.g. documents found, access given, charges payable and review rights, and an attachment which contains the detailed statement of reasons.

The Information Commissioner's role

The Information Commissioner is required to provide reasons for decisions on external review, e.g. affirming, varying or setting aside an agency decision or deciding not to deal with an external review application.

During an external review, if the Information Commissioner considers the reasons given by an agency were not adequate, the Commissioner can require the agency to provide an additional statement containing further and better reasons.

The Commissioner may also review agencies' prescribed written notices and statements of reasons as part of monitoring and reporting on agencies' compliance with the RTI 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