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of Northern Queensland**



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Right to Information in Queensland

Making a Right to Information Act Application

Environmental Defenders Office of Northern Queensland

Fact Sheet

04 June 2013

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Right to Information in Queensland

Making a Right to Information Act Application

This factsheet is intended as a plain English guide to a particular area of law. Whilst all care has been taken in its preparation, it is not a substitute for legal advice as legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

1. What is Right to Information?

Right to Information (“RTI”) is the Queensland equivalent of freedom of information (“FOI”) in other states and nationally. FOI laws, in all states and nationally, provide the public with a general, legally enforceable right of access to information held by those governments.

In summary, State and national FOI legislation:

- Establishes a system for individuals to make sure that information in government documents about their personal affairs is accurate and not misleading¹;
- Impose obligations on government agencies to publish and make available their policy documents²; and
- Create a legally enforceable right of access to documents held by Ministers, government departments and public/statutory authorities (government departments and statutory authorities will be referred to as government agencies).³

In Queensland, relevant FOI laws are the *Right to Information Act 2009* (Qld) (“RTI Act”), the *Information Privacy Act 2009* (Qld) (“IP Act”), and the *Freedom of Information Act 1982* (Cth), and the regulations to those Acts. In 2009 the RTI Act and the IP Act replaced the previous *Freedom of Information Act 1992* (Qld) and set up a new freedom of information system in Queensland.

Generally speaking:

- Personal information is accessible under the IP Act; and
- Non-personal information is accessible under the RTI Act.

¹ s.40(1): *IP Act* (Qld)

² s.20(1): *RTI Act* (Qld)

³ s.23(1): *RTI Act* (Qld)

This factsheet will focus on accessing non-personal information under the RTI Act, as this is often a good information-gathering tool for conservationists. References to legislation in this factsheet are references to the RTI Act unless otherwise stated. For information on Commonwealth FOI laws, see EDO NQ's "*Commonwealth Freedom of Information*" factsheet.

In Queensland you do not have to establish a special interest or reason to take advantage of the RTI Act to access non-personal information, but there are certain instances where information will not be released. This factsheet will deal with the process to access non-personal information, and exemptions to the right to that information under the RTI Act.

2. What documents may be accessed under the RTI Act?

The RTI Act creates a legally enforceable right of access to certain government documents.⁴ It also creates a positive obligation on government agencies to publish any policy documents they create.⁵

Access to government documents

The right of access is to "documents".⁶

A "document" is defined to include:

- Any paper or other material on which there is writing;
- Any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- Any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).⁷

A person cannot use an RTI request as a method of compelling a government agency to simply answer questions or provide information that it does not keep in a documentary form. However, if the agency could create a written document out of information it otherwise has possession of but not yet in documentary form, the agency can be compelled to create the document.⁸

Access to policy documents

⁴ s.23(1)

⁵ Chapter 2

⁶ s.23(1)

⁷ s.36: *Acts Interpretation Act 1954* (Qld)

⁸ s.68(1)(e)

The RTI Act creates a positive obligation on government agencies to publish any policy documents they create.⁹ This is quite separate from their obligations to respond to an RTI access request from a member of the public.

An agency's policy documents are of particular interest where the agency is responsible for granting licenses or permits of various kinds or for providing welfare benefits. In that respect, the policy documents may consist of manuals, interpretations, rules, guidelines, practices or precedents. For example, the Commonwealth Department of Social Security makes available for inspection and purchase by the public the manuals used by its officers when making a decision about a person's eligibility for particular benefits. Members of the public have a right to inspect these documents at no charge, but obtaining copies may involve a fee.

3. What documents may not be accessed under the RTI Act (Qld)?

The RTI Act (Qld) may not be used to access three types of documents¹⁰:

1. documents only containing the personal information of the applicant;
2. documents to which the RTI Act does not apply; and
3. documents published by an agency to which the RTI Act does not apply.

Documents only containing the personal information of the applicant

One purpose of FOI laws is to allow members of the public to access documents held by government which contain personal information about them. However, in Queensland this is handled through the IP Act and not the RTI Act.¹¹ Therefore, applications for all such documents should be made through the IP Act. Generally, gaining access to such documents is fairly easy, unless they contain exempt information or would unreasonably divert resources away from an agency or Minister.¹²

Documents to which the RTI Act does not apply

Certain documents have been judged by Parliament to be too sensitive to be released under the RTI Act. If a document falls into one of these classes, it cannot be accessed through the RTI Act at all.

Documents to which the RTI Act does not apply to are:

1. intelligence agency documents;

⁹ Chapter 2

¹⁰ Chapter 1, Part 2

¹¹ s.8(1)

¹² s.58(2)

2. documents created under the *Terrorism (Preventative Detention) Act 2005* (Qld);
3. certain documents created under the *Crime and Misconduct Act 2001* (Qld);
4. certain documents created under the *Police Powers and Responsibilities Act 2000* (Qld);
5. certain documents created under the *Police Service Administration Act 1990* (Qld);
6. certain documents received by the Queensland Integrity Commissioner under the *Public Service Ethics Act 1994* (Qld);
7. documents received or created by the Prostitution Licensing Authority under the *Prostitution Act 1999* (Qld);
8. coronial documents relating to a death the coroner is investigating;
9. root cause analysis documents about an event created under the *Ambulance Service Act 1991* (Qld) or *Health Services Act 1991* (Qld);
10. certain documents under the *Workers Compensation and Rehabilitation Act 2003* (Qld);
11. particular documents under the *Biodiscovery Act 2004* (Qld);
12. documents that comprise confidential commercial information in relation to the *Gene Technology Act 2001* (Qld);
13. certain documents under the *Sugar Industry Act 1999* (Qld); and
14. certain documents to which the repealed *Freedom of Information Act 1992* (Qld) did not apply.¹³

Documents published by an agency to which the RTI Act (Qld) does not apply

Government agencies that the RTI Act does not apply to include:

1. the Governor;
2. Parliament;
3. grammar schools;
4. parents and citizens associations;
5. courts and tribunals in relation to their judicial functions;
6. the Queensland Treasury Corporation in relation to its commercial interests;
7. the adult guardian in relation to investigative or audit interests;
8. the Health Rights Commission and Commissioner in relation to conciliation of health services complaints; and
9. certain Government owned corporations and energy corporations.¹⁴

¹³ Schedule 1

¹⁴ Schedule 2

In addition, government agencies and Ministers have the power to refuse access to documents in some circumstances. These circumstances are detailed in part 6 of this factsheet.

4. Making a RTI Act application

RTI Act access requests must be in writing and be lodged with the relevant government body or Minister holding the documents.¹⁵

After identifying the document you want and establishing the government agency or Minister holding the document, you need to make a written request, usually to the FOI Coordinator of the agency. Some agencies provide special forms, for example the Department of Environment and Resource Management, but you do not have to use these.

Your application must –

- be in the approved form (in writing);
- specify that it is made under the RTI Act (Qld) - i.e. "I am seeking this information in accordance with the *Right to Information Act 2009 (Qld)*.";
- include the prescribed fee;
- include an address for return mail; and
- include enough information about the documents sought to enable the agency to identify them.
- Specify whether the access to the document is being accessed for the benefit by the applicant or another party.
- If access to the document is sought for the benefit of a another party, that party must be named¹⁶

In your application you are able to specify the form of access you want (for example, photocopies, inspection, transcript of a recording), but do not have to.

If you *do not* specify the form of access you would like, then the relevant government agency or department may choose to give you access to the requested documents in a number of different forms¹⁷. If you *do* specify the form of access that you would like, then the relevant government department must provide access in that manner.¹⁸

¹⁵ s.24

¹⁶ s.24(2)

¹⁷ s.68(1)

¹⁸ s.68(3)

5. Procedure for dealing with a RTI Act application

There are five steps that are involved when dealing with a RTI Act application:

1. The relevant government agency or Minister must first consider whether the application was properly made under the RTI Act;
2. If the application has been properly made, the agency or Minister must give the applicant a schedule of relevant documents and a charges estimate notice before the end of the processing period¹⁹;
3. After receiving the schedule of documents and notice of charge, the applicant must confirm, narrow or withdraw the application within the prescribed period²⁰;
4. If the application is for information which if disclosed may reasonably be expected to cause concern to another party, the agency or Minister must consult with the relevant third party and obtain their opinion on whether the information should be released²¹;
5. The agency or Minister must reach a decision on which documents should be released and inform the applicant within the time set out in the legislation (any decision to refuse access must be accompanied by reasons).²²

Has the application been properly made under the RTI Act?

There are three instances where an application may not be made properly under the RTI Act:

1. the application does not comply with all the relevant application requirements²³;
2. is outside the scope of the RTI Act (such as for a document or entity to which the Act does not apply)²⁴; or
3. the application is for the applicant's personal information and could have been made under the IP Act.²⁵

If the application does not comply with the application requirements, the agency or Minister must inform the applicant of this within 15 business days and give them a reasonable chance to address the problem.²⁶

If the application is outside the scope of the RTI Act, the agency or Minister must inform the applicant of this within 10 business days.²⁷

¹⁹ s.36(1)

²⁰ s.36(3)

²¹ s.37(1)

²² s.54

²³ For application requirements see s.24

²⁴ s.32

²⁵ s.8

²⁶ s.33

If the application is for the applicant's personal information, the agency or Minister must inform the applicant of this within 15 business days and give the applicant a chance to ask for the application to be dealt with under the IP Act.²⁸

Schedule of relevant documents and charges estimate notice

A schedule of relevant documents is a schedule that sets out a brief description of the classes of documents relevant to the application in the possession or control of the agency or Minister as well as the number of documents in each of these classes. However, it does not have to include details of any information that would be exempt from disclosure under the RTI Act.²⁹

A charges estimate notice is a notice setting out any processing and access charges the applicant will need to pay to get access to the documents.³⁰

The processing period for providing both of these is within 25 business days of the application being received by the agency or Minister.³¹

Applicant must confirm, narrow or withdraw the application within the prescribed period

After receiving the charges estimate notice the applicant must either confirm, narrow or withdraw the application within the prescribed period.³² The "prescribed period" is 20 business days from the date listed on the charges estimate notice.³³ If the applicant narrows the application, the Minister must provide a new charges estimate notice.³⁴ However, this may only be done one extra time.³⁵ If the applicant does not do either of these, their application is taken to have been withdrawn.³⁶

Agency or Minister may have to consult with relevant third party

Where the request relates to documents that if released, could reasonably be expected to cause concern to a third person, that person must be consulted prior to the release of the documents.³⁷ Such a situation would arise if, for example, you were to request documents relating to government plans to construct a highway through neighbouring property which might contain information affecting the interests of the owner of that property, such as details of confidential negotiations between that person and the government regarding compensation.

²⁷ s.32(2)

²⁸ s.34

²⁹ s.36(7)

³⁰ s.36(7)

³¹ s.18(1)

³² s.36(3)

³³ s.36(7)

³⁴ s.36(4)

³⁵ s.36(5)

³⁶ s.36(3)

³⁷ s.37(1)

The third party may object to the release of the documents on the grounds that the documents are outside the scope of the RTI Act or contain information exempt from disclosure.³⁸ The agency or Minister will take these views into account when deciding whether to release the documents. This may delay access to the documents until the agency's or Minister's discussions with the third party are complete, and any review rights have been used.³⁹

Decision to release information

Once a person makes a properly made application for a document, the agency or Minister must consider the application and make a decision as to:

1. Whether access is to be given to the document; and
2. If access is to be given, whether any charge must be paid before access is given.⁴⁰

When considering whether to grant access to the document, the agency or Minister must favour disclosure, and decide to give access to the document unless the public interest favours non-disclosure of the document.⁴¹ In addition, if a document only contains some information which should not be disclosed, the agency or Minister must provide a copy of the document which has had that information deleted if it is possible to do so.⁴²

However, if an applicant disagrees with an agency's decision to not grant access to a document, they are entitled to have an independent body decide whether or not you should see the documents.⁴³ Our factsheet "*Reviewing a Right to Information Act Decision*" describes these appeal rights in detail.

6. When the agency or Minister can choose to refuse access to a document

Dealing with the application would divert the resources of an agency or Minister

An agency or Minister may refuse to deal with a RTI Act application where they believe the work involved would:

1. substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or

³⁸ s.37(1)(a)

³⁹ s.37(3)(d)

⁴⁰ s.45(a)

⁴¹ s.44(1)

⁴² ss.74 and 75

⁴³ Part 9

2. interfere substantially or unreasonably with the performance by the Minister of the Minister's functions.⁴⁴

The agency or Minister can only make this decision after considering the number and volume of documents requested and the difficulty associated in identifying, locating or collating the documents.⁴⁵

Before refusing to deal with a RTI Act application on these grounds, the agency or Minister must give the applicant written notice that:

- states an intention to refuse to deal with the application;
- advises that the applicant may consult with a specified officer, with a view to modifying the application (for a consultation period of 10 business days after the applicant is given notice);
- provides the applicant a reasonable opportunity to consult with the officer; and
- provides the applicant, as far as reasonably practicable, with information to assist the making of an application in a form that would allow the application to be processed.⁴⁶

If the applicant fails to consult after being given a notice, then the application will be taken to have been withdrawn.⁴⁷ The applicant is also permitted, after consultation, to give the officer written notice, either confirming or altering the application.⁴⁸

Exempt information

Under the Queensland's RTI Act, government agencies and Ministers may refuse access to certain categories of documents known as exempt documents.⁴⁹ If all of the documents to which access is sought are exempt documents, then the agency or Minister may refuse to deal with the application altogether, without even identifying any or all of the documents.⁵⁰

Exempt documents are documents that Parliament believes should normally be kept confidential to protect essential public interest or the private or business affairs of other individuals.

The following are the types of documents that may be held to be exempt from disclosure:

1. Cabinet and Executive Council Matter

⁴⁴ s.41(1)

⁴⁵ s.41(2)

⁴⁶ s.42(1)

⁴⁷ s.42(4)

⁴⁸ s.42(2)

⁴⁹ s.47(3)

⁵⁰ s.40

2. Information briefing an incoming Minister
3. Information revealing particular Sovereign communications
4. Information which, if disclosed, would be contempt of Parliament or contempt of Court
5. Information subject to legal professional privilege
6. Information which disclosure of which would be a breach of confidence
7. National or State security information
8. Law enforcement or public safety information
9. Investment incentive scheme information
10. Information that disclosure of which is prohibited by an Act.⁵¹

Disclosure of the document would be contrary to public interest

The agency or Minister may refuse to grant access to a document where to do so would be contrary to the public interest.⁵² To determine whether disclosure would be contrary to the public interest, the agency or Minister is required to:

1. Identify public interest factors irrelevant to the decision and then disregard them;
2. Identify public interest factors favouring disclosure;
3. Identify public interest factors favouring nondisclosure;
4. Balance the relevant public interest factors favouring disclosure against those favouring nondisclosure;
5. Decide if, on balance, disclosure of the information would be contrary to the public interest; and
6. Unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.⁵³

The RTI Act contains a comprehensive list of factors which are irrelevant to deciding public interest, in favour of disclosure in the public interest and in favour of nondisclosure in the public interest.⁵⁴

In addition, disclosure will also be contrary to the public interest where:

1. disclosure would release personal information of a child that is not in the child's best interest⁵⁵; or

⁵¹ Schedule 3

⁵² s.49(1)

⁵³ s.49(3)

⁵⁴ Schedule 4

2. disclosure would release personal healthcare information that would harm the physical or mental health of the applicant.⁵⁶

Documents do not exist or cannot be located

If a document does not exist or cannot be located, then the agency or Minister may “refuse” access to it.⁵⁷ Before deciding that a document does not exist or cannot be located, the agency or Minister must have taken all reasonable steps to find the document.⁵⁸

Documents can be accessed by other means

You cannot use the RTI Act to access documents that are accessible by other means, including documents that:

1. are available for a fee under other legislation or administrative process;
2. are reasonably available for public inspection under the *Public Records Act (Qld) 2002* or in a public library;
3. have been stored for preservation or safe custody in the Qld state archives and is a copy of a document of an agency; or
4. are commercially available.⁵⁹

7. How long will it take to process the application?

The agency or Minister must make the final decision on whether to release the documents within the “processing period”, which is 25 business days from the date they receive the initial application.⁶⁰ However, this can be extended substantially through delays allowed by the RTI Act. So, whilst the processing period is only 25 business days (5 weeks) long, applicants should be prepared for it to take some time longer (perhaps even months) for a RTI Act application to be assessed and documents released.

⁵⁵ s.50(2)

⁵⁶ s.51(2)

⁵⁷ s.47(3)(e)

⁵⁸ s.52(1)(b)

⁵⁹ ss.47(3)(f) & 53

⁶⁰ s.18(1)

8. How much will it cost to make an application?

Application Fees

For RTI Act applications lodged with a Queensland government agency or Minister, the application fee is \$38.⁶¹ Additional fees will apply for searching for the requested documents, supervising the search, making the decision and providing copies of the document. These fees are set out in the table below.

Fees for searching and supervising access

<i>Charge</i>	<i>Amount or Rate of Charge</i>	<i>Section/Regulation</i>
Application fee for access to a document	\$38.00	s.24(2)(a):RTI Act reg. 4:RTI Regs
Processing charge for time spent by an agency or Minister in searching for or retrieving a document.	\$5.60 for each 15 minutes or part of 15 minutes	s.56(a):RTI Act reg. 5:RTI Regs
Processing charge for time spent by an agency or Minister in making, or doing things related to making, a decision on an application for access	\$5.60 for each 15 minutes or part of 15 minutes	s.56(b):RTI Act reg. 5:RTI Regs
Access charge for giving access to a written document by providing a black and white photocopy of the document in A4 size	\$0.20 for each page	s.57:RTI Act reg. 6(1)(b):RTI Regs
Charge for giving access to a document other than by: 1. Inspection; or 2. providing a black and white photocopy of the document in A4 size.	An amount that is not more than the actual cost incurred by an agency or Minister in giving access to the document.	s.57:RTI Act reg. 6(1)(a):RTI Regs

Notes:

1. The application fee may not be waived.⁶²
2. Processing charges are not payable if the agency or Minister spends less than 5 hours processing the application⁶³.
3. The amount of time spent searching for or retrieving a document does not include:
 - a. if the document is not found in the place where it ought to be located (according to the filing system of the agency or of the office of the Minister) - any time other than the time that would have been spent by the agency or Minister in searching for or retrieving the document if the document had been found in that place⁶⁴; or

⁶¹ Reg.4: Right to Information Regulations 2009 (Qld) ("RTI Regs")

⁶² s.24(4)

⁶³ Reg.5(1)(a)

⁶⁴ Reg.5(2)

- b. *if the relevant filing system ought reasonably to have indicated, but does not indicate, the place where the document is located - any time other than the time that would have been spent by the agency or Minister in searching for or retrieving the document if the relevant filing system had indicated the place where the document is located and the document had been found in that place*⁶⁵.
4. *No processing or access charges are payable if the applicant is in "financial hardship"*⁶⁶.
An applicant is individual is in financial hardship if:
- a. *They hold a concession card*⁶⁷; or
 - b. *It is a non-profit organisation "in financial hardship" (which depends on the nature and size of the organisation's funding base, and the amount of the charge when compared to the organisation's financial position).*⁶⁸

Charges estimate notices

If an agency or Minister considers a processing charge or access charge is payable in relation to an application, the agency or Minister must give the applicant a written notice (a "charges estimate notice") advising the following⁶⁹:

- whether any charges will be waived;
- the agency's or Minister's estimate of the amount of any processing or access charge;
- the basis for making the estimate;
- the day on which the decision was made;
- the name and designation of the person who made the decision;
- that the applicant can consult with the agency to modify the application in a way that will reduce the charge;
- that the applicant must confirm, narrow or withdraw the application within the prescribed period of 20 business days;
- any rights of review under the RTI Act.

A charges estimate notice cannot be contested, however the applicant may consult with the agency or Minister to work out how the amount of the charge can be reduced by narrowing the application.⁷⁰ The applicant may also be able to reduce their costs by viewing or inspecting documents rather than photocopying them all. The RTI Coordinator (if any) of the relevant agency or department will also be able to give the applicant information about deposits – when they are to be paid and how much.

⁶⁵ Reg.5(3)

⁶⁶ s.66

⁶⁷ s.66(2)(a)

⁶⁸ s.66(2)(b)

⁶⁹ ss.36(1)(b)(ii) & 36(7)

⁷⁰ s.36(2)

9. How is the information provided?

The information is to be provided in the form requested in your RTI application.⁷¹ If you *don't* specify the form of access you would like, then the relevant government agency or department may choose the form of access you may have to the requested documents.

Essentially there are two options:

- Copies of the document (including tape, transcript etc.); or
- An opportunity to inspect documents (including tapes, transcripts etc.) which you may select for copying.⁷²

Access to a document in a particular form requested may be refused where it would unreasonably interfere with the operations of an agency, cause detriment to the preservation of the document or infringe copyright owned by another party (other than the State).⁷³

10. Writing a RTI Act application letter

An RTI Act application letter must:

1. identify the documents sought with as much detail as possible;
2. include your current address and contact telephone number;
3. advise of your preferred form of access – e.g. inspection, photocopies or electronic; and
4. enclose the application fee.

You should also keep a copy of your initial application letter, as this will be needed if you seek to appeal any decision relating to your application. An example of a suitable letter format is provided in the *Appendix* on the next page (page 18).

⁷¹ s.68(3)

⁷² s.68(1)

⁷³ s.68(4)

11. Further Information

If you have any further questions or concerns about any of these matters, then please contact us on the details below. While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

Stay in contact with your local Environmental Defenders Office.

12. Useful Contacts

EDO NQ

Level 1, 96-98 Lake Street
CAIRNS QLD 4870
Ph : 07 4031 4766
Fax: 07 4041 4535
edonq@edo.org.au

EDO (Qld)

Level 9, 193 North Quay (cnr Herschel St)
BRISBANE QLD 4000
Ph: 07 3211 4466
Fax: 07 3211 4655
edoqld@edo.org.au

To become a member of the Environmental Defender's Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at edonq@edo.org.au or on 07 4031 4766. Our web address is www.edo.org.au/edonq

Appendix: Example of RTI Act application letter

8 September 2009

Manager, Administrative Review
Department of Environment and Resource Management
GPO Box 2454
BRISBANE QLD 4001

Dear Sir / Madam

RE FOI REQUEST, KAHUNA BAY EIS

Pursuant to the provisions of the *Right to Information Act 2009* (Qld), Protect the Environment Conservation Council Inc. ("PECC") requests copies of all and every document in the power, control or possession of the Department of Environment and Resource Management ("DERM") relating to or touching upon:

1. Departmental assessment of the Kahuna Bay Final EIS, including but not limited to: memos, reports, studies, correspondence, emails, draft portions of the joint Final Assessment Report and briefing notes.
2. Departmental response to the Kahuna Bay Supplementary EIS, including but not limited to: memos, reports, studies, requests for studies, emails, draft responses, correspondence and records of phone conversations.

Please find **enclosed** a cheque for the requisite \$38 application fee.

Could you please advise us **as soon as possible** of the charges (if any) that will apply to obtaining copies of those documents from you so that we may arrange for those funds to be available?

Yours sincerely

Susan Smith
Coordinator