

RIGHT TO INFORMATION AND INFORMATION PRIVACY POLICY and PROCEDURE



OLAO/2018/019
Version 1.0

Effective Date: 26/02/2020
Last Reviewed: 23/03/2021

Purpose

The purpose of this policy is to outline the functions and activities to be undertaken by officers of the Office of the Land Access Ombudsman (the LAO) in discharging their functions under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act).

Policy statement

The LAO is committed to ensuring that information held by the LAO is proactively released wherever possible under our Administrative Access Scheme (AAS), with applications under the RTI Act or IP Act being necessary only as a 'last resort'.

The RTI Act and the IP Act create an enforceable right of access to information in the LAO's possession or control unless the information is exempt or unless it is, on balance, contrary to the public interest to give access.

The legislative intent of the RTI Act and IP Act is that they should be administered with a pro-disclosure bias. The LAO may deal with an access application even if the RTI Act provides that it may refuse to deal with the application.

The LAO will ensure that all requests for information under the RTI Act and the IP Act are handled in accordance with the legislation by:

- recognising, respecting and maintaining the community's trust to appropriately and securely collect, store and use their personal information
- processing requests for information fairly, within the prescribed timeframes, and providing all possible assistance to the community when they make requests for information
- continually improving systems, processes and skills to maximise access to information and the protection of personal information
- using innovative ways to ensure information is available to all sectors of the community.

Ways of accessing information

Members of the public have a number of avenues to access information about the LAO.

Administrative access

Administrative access arrangements refer to the process of releasing information which is not specifically authorised or provided for in legislation. Examples include information that is available on the LAO's website, including the publication scheme and the disclosure log. The RTI & IP Co-ordinator is responsible for accepting, allocating and/or processing administrative access requests under the administrative access scheme. Information regarding Administrative Access can be found in the LAO's Administrative access policy.

Publication scheme

Under s 21 of the RTI Act, the LAO is required to publish a publication scheme as part of its website. A publication scheme shows what information the agency routinely makes available and how the information can

be accessed. The publication scheme must comply with the [Ministerial Guidelines: Operation of Publication Schemes and Disclosure Logs](#) published by the Minister for Justice and Attorney-General.

Information included in a publication scheme should be easy for any person to find and use, and should be easily accessible through the agency's website, by collection from the agency or by request, or by providing it quickly by mail or email.

The LAO makes as much information as possible available through its publication scheme. The scheme describes and categorises information routinely available from the LAO. Where possible, this information is able to be accessed from the LAO's website.

Information is grouped and available through seven classes:

- about us
- our services
- our finances
- our priorities
- our decisions
- our policies
- our lists.

Disclosure log

Section 78A of the RTI Act requires agencies to keep a disclosure log on their website, which lists non-personal documents that have been released in response to RTI access applications. A disclosure log makes information disclosed to an applicant under the RTI Act available to a wider public audience.

Copies of documents released through RTI that do not contain personal information are to be located in the disclosure log, if reasonably practicable. Otherwise, details identifying the documents and information about how the documents may be accessed may be included in the disclosure log.

Access applications

If the information being sought is not available through any of the options mentioned above, then members of the public can apply to access information under the RTI Act or IP Act.

RTI and IP access applications

The LAO has a Memorandum of Understanding (MoU) with Right to Information Services (RTI Services) within the Department of Environment and Science. In accordance with the MoU, RTI Services handle all applications made under the RTI Act and IP Act received and referred by the LAO. RTI Services handling of LAO RTI and IP applications includes:

- providing receipt of the request
- processing
- transfer
- applicant and third party consultation,
- decision-making and decision-making notifications to the applicant and third parties.

RTI Services also provides the same services in relation to any internal or external review of an application referred to RTI Services by the LAO. Applicants can be referred to RTI Services if they have any questions.

An application under the RTI Act or IP Act may be made by:

- a person residing in Australia, whether or not they are an Australian citizen

- a person residing abroad, whether or not they are an Australian citizen
- a company, association or other legal entity or group
- a person serving a sentence in prison, or
- a child.

Applicants do not need to demonstrate a special interest or 'need to know', nor are they required to provide reasons for applying for particular documents.

What can be applied for?

An application can be made under the RTI Act and IP Act for a 'document of an agency'.

What is a 'document'?

A document is not defined in the IP Act or the RTI Act. However, Schedule 1 of the *Acts Interpretation Act 1954* sets out the meaning of commonly used words and expressions and defines a "document" as including:

- 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
- any disc, tape or other article or any material from which sounds, images, writing or messages are capable of being reproduced (with or without the aid of any other article or device).

The definition is very broad and includes hardcopy files, electronic files, computer printouts, emails, work diaries, maps, plans, photographs, post-it notes, tape recordings or videotapes and other means of storing information, no matter how old.

A document includes copies and extracts of documents. It also includes draft documents and notations made on draft documents.

Documents of an agency

A 'document of an agency' includes any document (other than a document to which the RTI Act or IP Act do not apply in accordance with schedule 1 of the RTI Act) in the possession or under the control of the agency, whether brought into existence or received in the agency, and includes:

- a document to which the agency is entitled to access; and
- a document in the possession, or under the control, of an officer of the agency in the officer's official capacity.

A document is in the **possession** of an agency if it is in their physical possession.

A document is in the **control** of an agency if they have a legal right to control the document. It, therefore, captures documents in the possession of consultants or external service providers that are not physically in the possession of the LAO.

Documents existing at what point in time?

Section 27 of the RTI Act provides that an access application is taken only to apply to documents that are, or may be, in existence on the day the application is received. That is, an agency is not obliged under the RTI Act to create a new document in order to respond to an access application.

Requirements of applications under the RTI and IP Act

If applicants do wish to make a formal application under the RTI Act and IP Act, they do not need to provide a reason for requesting information, but must apply using the [RTI and IP access application form](#) (online or hard-copy) or in writing by way of letter or email. The application should include:

- enough information to identify the documents (e.g. the title, subject matter, LAO reference number, type of document or the date it was produced)
- an address to which notices can be sent
- an application fee (an initial application fee of \$50.80 applies to all applications and cannot be waived)
- a certified copy of identity documents (e.g. a certified copy of their driver's licence or passport) for applicants seeking access to their personal information
- a valid authorisation and certified copy of identity of an agent if a third party is acting on behalf of the applicant.

A certified copy means a photocopy certified by a solicitor, barrister or justice of the peace to be a true copy of the original. Information about where to find a justice of the peace can be obtained from the Department of Justice and Attorney-General's website at www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace.

If the applicant is unable to provide any of the proof of identity documents listed above, they should provide a statutory declaration from a person who has known them for 12 months or more.

If an agent is acting for a party, the agent must provide evidence of identity and evidence of the agent's authorisation. Documents that will establish an agent's authority may include:

- in the case of a legal representative, a letter of authority from their client permitting them access to their client's documents held by the LAO, and signed by the legal representative and the client (the applicant)
- a will or court order appointing the agent to act as the applicant's guardian
- in the case of a child, evidence that the agent is the child's parent or guardian.

For RTI applications only, the applicant must state whether or not they are accessing the documents to benefit another entity (the beneficiary) and, if they are, identify the beneficiary. For example, if a journalist makes an access application for use of a document by an electronic or print media organisation.

Procedure for applications under the RTI Act or IP Act

An LAO employee who receives an application for access to documents under the RTI Act or IP Act, or where it is considered that access to information held by the LAO is being requested under those Acts (although not expressly stated), must act quickly as legislation sets tight limits on processing times for applications. The application for access to documents should be forwarded to Right to Information Services immediately. Contact details for Right to Information Services are:

Right to Information Services
Level 31, 400 George Street
Brisbane
GPO Box 2454
Brisbane Qld 4001
Phone: 3330 6111
Fax: 3033 0930
Email: rtiservices@des.qld.gov.au

Searches

Once an RTI application has been received by RTI Services they will send a document search request to the LAO along with a document certification form which is to be completed. The LAO must respond to this document search request as soon as practicable, but preferably within six business days. RTI and IP applications must be processed by RTI Services within 25 business days and any delays by the LAO in providing documents compromises the ability to complete the application within the statutory timeframe. If the LAO employee responding to the RTI Services request believes that the relevant documents will take longer than six days, they should contact RTI Services immediately. Extensions are granted in rare circumstances and must be discussed with RTI Services as soon as possible.

It is the LAO's responsibility to ensure that diligent and thorough searches for all responsive documents are conducted. This includes:

- archival searching (if relevant)
- searches of relevant hardcopy files
- searches of relevant electronic files
- consulting with each employee who had involvement in the matter to check whether they possess any other relevant records, including hardcopy documents, emails, file notes, diary entries, etc.

The LAO must keep a clear record of all areas and files that were searched and located in response to the application. A document could consist of one or more of the following:

- official and unofficial files
- working papers including loose paper (e.g. post-it notes)
- reports (including drafts)
- diaries and diary notes (including personal diaries that contain work-related information)
- computer files and other electronic data (including emails, CDs, DVDs, USB keys and external hard-drives)
- emails (both work related and personal emails are accessible under RTI)
- maps, charts and plans
- videos and audio recordings
- films and photographs
- X-rays and MRIs.

If the scope of the application is too wide, the LAO should contact RTI Services to discuss the possibility of narrowing the scope of the application. Further, if LAO employees are unsure if an item is relevant to the scope of the application, RTI Services should be contacted to discuss if it needs to be included. Irrelevant information should not be sent to RTI Services.

Where it is not possible to establish the whereabouts of a document because it has been lost, is missing or has been destroyed, the LAO must fully document the thoroughness of the search. It may be necessary to provide a Statutory Declaration detailing the searches conducted and any possible explanation for the fact that documents are lost, missing, or have been destroyed (for example, documents may have been destroyed in accordance with the [Public Records Act 2002](#) and the LAO's Retention and Disposal Schedule).

Where it can be shown that an officer has destroyed documents, or falsely denied knowledge of documents or concealed documents, disciplinary or criminal penalties may apply.

If LAO employees have any concerns about the release of information or if there is contentious information contained in the documents, they should either contact RTI Services or note their concerns on the document search certification form. Sufficient information should be provided so that the issues associated with the document can be understood.

Sending information to RTI Services

LAO employees should not change, update or edit documents in any way before forwarding them to RTI Services. RTI Services will decide whether information is exempt or not in the public interest to release and will remove information before the documents are released.

All sections of the document search certification form should be completed, even if no relevant documents can be found. This is important in the event that an applicant lodges a review request. A senior officer (a manager or the LAO) should sign the certification form.

All versions of a document (electronic and hard copy) should be forwarded in response to the scope of an application. If there are drafts or working copies with handwritten notations on them, all versions must be supplied. Copies (electronic or hard copy) should be sent and the original file and documents should remain with the LAO. Documents can be sent to RTI Services by way of email or post. If documents are emailed, the LAO needs to ensure that the document search certification form has been signed as directed and scanned and returned to RTI Services.

Full versions of emails should be included, including all attachments, as these form part of the document. The LAO should also be aware that emails provided from the email archive vault may be truncated.

Interested officers

If there is a work related interest in an RTI and IP application, the LAO or a manager may contact RTI Services and request to be listed as an interested officer. Interested officers will be notified when the application has been completed and will be able to view the completed application.

Statutory time frames

RTI and IP applications must be processed within 25 business days of receipt of the application. Extensions of 10 business days can be granted if consultation with third parties are needed.

The timeframe for calculating the due date for a specified activity excludes the event which starts the clock. The day on which this 'initiating event' occurs is treated as 'day zero'. Accordingly, the day that a valid application is received by the LAO is not counted in calculating the processing period.

For further information regarding timeframes, see the Office of the Information Commissioner's guidelines – [Timeframes for processing applications](#) and [How to calculate timeframes](#).

Disclosure log

If a decision is made in relation to an application to give access to a document that does not contain the applicant's personal information and the applicant accesses the document, then a copy of the document may be included in the disclosure log which is published on the LAO's website. Alternatively, details identifying the document and stating how the document may be accessed may be included in the log.

Agencies have a discretion not to publish documents if there is a clear reason not to (for example, they contain the personal information of a third party, or they contain exempt information).

After the applicant has accessed the relevant documents, RTI Services should identify any document that is appropriate to include in the disclosure log and notify the LAO by marking the relevant section located on the inside cover of the file.

File closure

Upon finalisation of all steps in the decision-making process, RTI Services ensure that the file is ordered and contains all relevant documents and correspondence, and that a copy of the decision is at the front of the file, as well as a copy of all documents dealt with in the application – clearly marked as exempt, released or partially released.

RTI Services then return the file to the LAO and the relevant information from the file will be entered into the Annual Report spreadsheet.

Internal and external reviews

If an applicant is dissatisfied with the initial decision, they have the option of applying for an internal or external review. These reviews are to be referred to RTI Services. Alternatively, the applicant can apply to the Office of the Information Commissioner for external review. They may also apply for external review if they have applied for internal review and are dissatisfied with the internal review decision, or if no decision was made during the requisite period.

Amendment applications under the IP Act

The IP Act provides people with the right to amend personal information held by the LAO if they believe it is inaccurate, out of date or misleading. Under the privacy principles, the LAO has a general obligation to amend a person's personal information if requested to do so. In most cases it will be appropriate for customers to undertake an informal process to update their personal information, such as where they want to update their current contact details. The LAO is required to assist people using reasonable, available and practicable informal options first.

However, if a customer wishes to make a formal application to amend their personal information under the IP Act, they can download the [Information Privacy Personal Information Amendment Application form](#) and submit it by way of post, fax, email or in person.

An LAO employee who receives a letter or application requesting an amendment to personal information under the IP Act, must forward it to RTI Services within one working day of receipt.

Only the individual who believes their personal information is out of date, inaccurate, incomplete or misleading can apply to have it amended.

In some circumstances, others who may apply on an individual's behalf include:

- a parent of a child
- an eligible family member of a deceased person
- a person with an appropriate interest applying on behalf of a deceased person.

No application or processing charges apply. Certified identification and/or an authority to act must be provided within 10 business days after the application was submitted.

Timeframes

The standard timeframe for processing an amendment application is 25 business days from the date of a valid application. This time may be extended if the applicant agrees. If a decision is not made in time, it is deemed that a decision has been made refusing to amend the document.

Notice of decision

Before the end of the processing period, RTI Services must provide the applicant with a 'prescribed written notice' which sets out:

- the decision
- the reasons for the decision
- the day on which the decision is made
- the name and designation of the person making the decision
- any rights of review available, including timeframes for seeking review.

Form of amendment

If RTI Services decides to grant the amendment, they may do so by:

- altering the personal information, including by way of deletion
- adding an appropriate notation to the personal information.

When making an alteration it is usually sufficient to strike through the words to be amended, add a side note indicating the nature of the defect and insert the correct details, or a note of where the correct details are to be found. It is also possible to include a copy of more accurate or up to date information on the file.

Any notation must:

- state how the information is inaccurate, incomplete, out of date or misleading
- if the information is claimed to be incomplete or out of date, set out the information required to complete the information or bring it up to date.

The existence of the notation should be clearly indicated on the cover of each of the applicant's files and the amendment itself should include a reference to the fact that the record was amended under the IP Act.

Notation if amendment refused

If RTI Services refuses to amend the applicant's personal information, the applicant can request that the LAO add a notation to the document that:

- states the way the applicant claims the information is inaccurate, incomplete, out of date or misleading
- if the applicant claims the information is inaccurate or misleading – sets out the amendments the applicant claims are necessary for the information to be accurate or not misleading
- if the applicant claims the information to be incomplete or out of date – set out the information the applicant claims is necessary to complete the information or to bring it up to date.

The LAO is not required to use the applicant's exact wording in any notation.

Internal and external reviews

If an applicant is dissatisfied with the decision, they have the option of applying for internal review or to the Office of the Information Commissioner for external review.

Roles and responsibilities

ROLE	RESPONSIBILITY
Refer information request to the RTI & IP Officer	All employees

Conduct searches for relevant documents	All employees
Administrative access arrangements; valid application requirements; file administration; statistical reporting.	RTI/IP Co-ordinator
Referral of initial and internal review applications to delegated decision-maker	RTI/IP Co-ordinator
Initial decisions	RTI Services
Internal review decisions	RTI Services
Coordinating response to external reviews	RTI Services

Relevant forms

- [Right to Information and Information Privacy Access Application](#)
- [Information Privacy Personal Information Amendment Application](#)

Glossary

For the purpose of this policy and procedure, the following definitions shall apply:

TERM	DEFINITION
IP Act	<i>Information Privacy Act 2009</i>
RTI Act	<i>Right to Information Act 2009</i>
RTI & IP Officer	Right to Information & Information Privacy Officer, nominated by the Land Access Ombudsman
LAO	Office of the Land Access Ombudsman

Related documents

This policy and procedure should be read in conjunction with:

- Instrument of Delegation made by the Land Access Ombudsman under s 30 of the RTI Act
- Instrument of Delegation made by the Land Access Ombudsman under s 50 of the IP Act
- Administrative Access Scheme
- [Working Retention and Disposal Schedule](#).

References

- [Acts Interpretation Act 1954](#)
- [Information Privacy Act 2009](#)
- [Right to Information Act 2009](#)
- [Public Records Act 2002](#)
- [Ministerial Guidelines: Operation of Publication Schemes and Disclosure Logs](#) (February 2013), issued by the Attorney-General and Minister for Justice

Further information

The Office of the Information Commissioner has produced detailed guidelines on the operation of the RTI Act and the IP Act which are available from the Office of the Information Commissioner's website at www.oic.qld.gov.au.

Review

This policy and procedure will be reviewed within two years of the approval date.

Approval


<p>Jane Pires Land Access Ombudsman</p> <p>Date: 14/4/2021</p>

Version history

VERSION	DATE	ACTION	DESCRIPTION / COMMENTS
1.0	26/02/2020		First release
1.1	24/03/2021	Amended OLAO to LAO	Internal Review

Keywords

Right to information, information privacy, privacy, personal information, access application, amendment application, RTI application, IP application, information commissioner, disclosure log, publication scheme