



Right to Information and Freedom of Information

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Introduction

Access to information laws provide members of the public with access to documents held by the government. Access to information legislation only applies to government ministers and agencies (i.e. government departments, statutory bodies and other public sector agencies). It does not apply to private sector bodies such as private hospitals or clinics, insurance companies and other private businesses. Also, some government bodies, especially security and intelligence organisations, are not subject to access to information law.

To create a right to access government-held information, it was necessary for legislation to be passed by parliament. The legislation, at both the federal and Queensland level, requires governments to publish information, grant access to information subject to certain exemptions, which may include consideration of the broader public interest, and also to allow the correction of personal information. The legislation recognises that information held by the government is to be managed for public purposes and is a national resource.

The purpose of the legislation is to ensure transparency in government by increasing scrutiny, discussion, comment and review of government activities and increase public participation in government processes, with a view to promoting better-informed decision making.

Agencies that have been specifically created to assist in the operation of the system are the Office of the Australian Information Commissioner (for Commonwealth-held information) and the Office of the Information Commissioner (for Queensland-held information). In addition, each individual Commonwealth and Queensland agency will have a specific freedom/right of information team that can be contacted prior to making a formal request. Contact with the specific agency's information unit prior to lodging a request for information is strongly recommended as it will help the applicant understand what types of documents are available, how to word a request and, significantly, will provide a realistic guide to what may be released or not, or what parts of the documents may need to be redacted. Contact prior to lodgement can help to generate realistic expectations of the likely outcomes of the process.

In summary, access to information legislation:

- creates a legally enforceable right of access to documents held by government agencies and ministers, subject to specified limitations and exemptions
- establishes a system enabling individuals to request correction of their personal information in documents held by government agencies
- imposes obligations on government agencies to publish and make available information about their functions, structure and processes.

Access to Information Legislation

The legislation governing access to information held at the Commonwealth level is the *Freedom of Information Act 1982* (Cth) (Freedom of Information Act). It applies to federal government agencies and ministers.

The Freedom of Information Act creates a:

- right of access to documents
- right to request the amendment of records containing personal information that is inaccurate, incomplete, out of date or misleading
- presumption of openness and maximum disclosure.

The Queensland legislation is the *Right to Information Act 2009* (Qld) (Right to Information Act) and the *Information Privacy Act 2009* (Qld) (Information Privacy Act). The Right to Information Act and the Information Privacy Act have different functions. The Right to Information Act creates a right of access to documents, and the Information Privacy Act provides for a right to request the amendment of records containing personal information that is inaccurate, incomplete, out of date or misleading. Both Acts apply to Queensland government ministers and agencies. The Right to Information Act also applies to all Queensland local governments and to corporations owned by the Queensland Government or Queensland local governments.

Other similar legislation

There are two other kinds of legislation that complement access to information legislation.

Archives legislation

Archives legislation regulates the retention and storage in special places (federal and state archives) of official public records, especially material of historical value. Archives legislation establishes a system of public access to these records. Commonwealth records are regulated by the *Archives Act 1983* (Cth), and Queensland records are regulated by the *Public Records Act 2002* (Qld).

Privacy legislation

Privacy legislation establishes a system to protect documents containing information about the private or personal affairs of individuals.

At the federal level, the *Privacy Act 1988* (Cth) (Privacy Act) establishes a set of information privacy principles (IPPs) and a system for investigating complaints about violations of privacy. The Privacy Act applies to Commonwealth government agencies, private sector credit reporting agencies holding personal credit information and private sector businesses of a certain size.

In Queensland, the Information Privacy Act has a broad privacy protection function. The Information Privacy Act also establishes IPPs and a system for investigating complaints about violations of privacy. The privacy protections provided by the Information Privacy Act apply to Queensland government ministers and agencies including government departments and public authorities. However, they do not apply to government-owned corporations (sch 2 pt 1 Information Privacy Act).

Publication of Information by Government Agencies

Access to information legislation requires government agencies to publish and make publicly available certain information that explains the functions, structure and processes of the agency. This requirement is separate from an agency's obligation to respond to a right-to-information request from a member of the public.

Commonwealth government agencies must publish information statements that set out an agency's functions and the kinds of documents it has available (s 8 Freedom of Information Act). These statements must be updated annually. Queensland government agencies must adopt a publication scheme (s 21 Right to Information Act) that sets out the kinds of information that an agency has available and how it is available (e.g. for inspection or for purchase either for a fee or free of charge).

Government agencies are also required to publish any policy documents they create. Policy documents may include manuals, interpretations, rules, guidelines, practices or precedents. For example, Centrelink makes available some manuals used by its officers when making a decision about a person's eligibility for a pension or other entitlement. Members of the public have a right to inspect these documents at no charge, but obtaining a copy of these documents may involve a fee.

Office of the Information Commissioner

The Office of the Australian Information Commissioner (Commonwealth) and the Office of the Information Commissioner (Queensland) are independent government agencies responsible for functions relating to access to information, privacy and government information policy. At both the federal and state level, information commissioners review decisions made by other government agencies under access to information and privacy legislation, and also deal with enquiries and complaints. Within the Office of the Australian Information Commissioner, freedom of information, privacy and information policy are integrated in a single office.

Accessing Your Personal Information

What is personal information?

Personal information is information or an opinion about an individual whose identity is apparent or can be determined from the information. Personal information includes information or an opinion that is part of a database. The personal information may be true or not and may be recorded in a material form or not.

Commonwealth and Queensland legislation on personal information covers the collection, storage, handling, accessing, amendment, transfer, use and disclosure of personal information, regardless of when it came into existence.

Personal information generally includes information about a person's:

- health
- personal relationships
- domestic or living arrangements
- name
- address
- date of birth
- religious or political affiliations
- personal financial arrangements.

Personal information would not normally include information about a person's:

- business
- professional or workplace activities.

There may be circumstances where employment-related matters relate to personal information. Applicants should discuss their application with a representative of the agency holding the information for guidance if it is not clear whether the information is personal information. This should happen before the application is lodged.

Making an Application to Access Personal Information

Before making a formal application to access or amend personal records, it is recommended that an informal approach by phone or email to the specific agency be made first. It is often through these informal means that personal information can be amended, without the need for a formal application.

Commonwealth records

The request for access to personal information under the Freedom of Information Act must be in writing (s 49 Freedom of Information Act). It should also provide an email or physical address of the applicant for communications to be sent to. As far as practicable the request should specify:

- the document or official document containing the record of personal information that is claimed to require amendment
- the information that is claimed to be incomplete, incorrect, out of date or misleading
- whether the information is claimed to be incomplete, incorrect, out of date or misleading
- the applicant's reasons for so claiming

- the amendment requested by the applicant.

To assist people in making a valid request, most government agencies will provide a non-mandatory request form on their website. These forms may also be available in hard copy and can be obtained by contacting the specific government agency.

Queensland records

For Queensland records, a request for access to personal information must be made by filling out the Right to Information application form. The form can be found on the Queensland Government's Right to Information website (www.rti.qld.gov.au). The application must provide information about the document so that it can be identified and include an address to send communications to the applicant. Within 10 days of making the application for access to personal information, the applicant must provide evidence of their identity (s 24 Right to Information Act). Evidence of identity may include a passport, a birth certificate, a driver licence or a statutory declaration from a person who has known the applicant for more than one year (reg 3 *Right to Information Regulation 2009* (Qld) (RTI Regulation)).

Cost of application

There is no processing charge for access to personal information applications for either Queensland or Commonwealth-held personal records (s 59 Right to Information Act, reg 5 *Freedom of Information (Charges) Regulations 1982* (Cth)).

Amending Your Personal Information

Access to information legislation allows people who have gained access to documents concerning their personal affairs to lodge a request for amendment of the information on the basis that it is inaccurate, incomplete, out of date or misleading (pt 5 Freedom of Information Act, ch 3 Information Privacy Act). Amendment rights apply only where the documents concern personal information about the applicant (s 48 Freedom of Information Act, s 43 Information Privacy Act).

Before making an application to amend personal information, the applicant should consider whether the amendment can be made informally. Generally, amendments to a person's personal information, such as updated contact details, can be made by directly contacting the relevant agency. This option will be timelier and does not require the person to obtain the document before seeking an amendment or to meet certain requirements for a valid request.

Commonwealth records

There is no particular form for the request to amend Commonwealth records, but there are requirements of the application (s 49 Freedom of Information Act).

Time limits

The Freedom of Information Act requires that a decision should be provided as soon as practicable but not later than 30 days after the request is received (s 51D Freedom of Information Act).

Refusal of application

When an application for amendment is refused, and after all review and appeal mechanisms have been exhausted, the applicant may apply for the record to be annotated so that this information accompanies the document whenever it is consulted by an agency.

The government agency or minister will make an annotation to the document if the application to amend personal information is unsuccessful (s 51 Freedom of Information Act). The statements from the application will be added to the document. However, the agency or minister may decide not to make the annotation if it would be irrelevant or defamatory.

Queensland records

To amend personal information within Queensland records under ss 41 and 42 of the Information Privacy Act, there is a separate Information Privacy Personal Information Amendment application form. The form can be found on the Queensland Government's Right to Information and Information Privacy website. In completing the form, the applicant must supply their name and contact details, identify the document and the government agency that the request relates to, explain why the personal information is inaccurate, incomplete, out of date or misleading and provide evidence of identity.

Time limits

The Information Privacy Act requires that the request be processed within 25 business days of it being received (s 22 Information Privacy Act). However, there are circumstances that will give rise to the processing period being extended, and there is provision for the agency to seek an extension of time to process the request (ss 22(2), 55 Information Privacy Act).

Refusal of application

There are no provisions within Queensland legislation that allow for annotations to be made to documents relating to personal information.

Accessing Government Documents

Access to information legislation provides every person with a legally enforceable right to access certain government documents (s 11 Freedom of Information Act, s 23 Right to Information Act). Applicants do not need any special interest or reason for requesting access to government-held documents.

The information must be in documentary form for a person to make an access-to-information request. A person cannot use an access-to-information request as a method of compelling a government agency to simply answer questions or provide them with information that it does not keep in documentary form.

What is a document?

The definition of a 'document' under access to information laws is broad. A 'document' includes written documents, computer disks, audio and video tapes, photographs and maps (s 4 Freedom of

Information Act, sch 1 *Acts Interpretation Act 1954* (Qld)). Reference materials and Cabinet notebooks are not 'documents'.

The Freedom of Information Act and the Right to Information Act both apply to documents in the possession of the agency, regardless of whether the documents were created in the agency or received by it (s 4 Freedom of Information Act, s 12 Right to Information Act). The Acts therefore apply to documents received from third parties, including state and foreign governments, and documents the agency may have downloaded from an external website.

Government bodies where information legislation applies to

The Freedom of Information Act applies to federal ministers, government departments and agencies.

The Right to Information Act applies to Queensland ministers, government departments, local governments, public authorities and government-owned corporations and their subsidiaries.

Some government agencies have total or partial immunity from access to information law.

Government bodies that have total immunity from access to information laws

The Commonwealth Freedom of Information Act lists government bodies that are exempt from access to information laws. This list includes the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Office of National Assessments, the Parliamentary Budgets Office and the Australian Government Solicitor (s 7 Freedom of Information Act).

In Queensland, sch 2 of the Right to Information Act states the entities to which the access to information laws do not apply.

Government bodies that have partial immunity from access to information laws

Some government agencies have partial immunity. This means that access to information laws only apply to certain documents or functions of the agencies.

Some Commonwealth government agencies are exempt in respect of some types of documents. Partial immunities under the Freedom of Information Act often relate to documents relevant to the commercial activities of particular bodies. Some examples are documents of the Australian Broadcasting Corporation in relation to 'program material and datacasting content', the Australian Postal Corporation in relation to 'commercial activities' and the Reserve Bank of Australia in relation to 'banking operations' (sch 2 pt 2 Freedom of Information Act).

In Queensland, sch 2 pt 2 of the Right to Information Act list the entities to which this Act does not apply in relation to a particular function.

Making an Application to Access Government Documents

Commonwealth Government documents

There is no particular form for Commonwealth freedom of information requests. However, applicants should visit the website of, or contact a representative from, the relevant agency to check whether there are specific guidelines or sample forms available, as some agencies produce forms designed to assist applicants.

The Freedom of Information Act requires requests to:

- be in writing
- state that the request is for the purposes of the Freedom of Information Act
- describe the document so that it can be identified
- provide details for the agency or minister to send notices to the applicant.

Requests can be posted or emailed to the central office or regional offices of the relevant agency or minister. Where an agency receives a request for documents held by another agency, it may transfer the request to that other agency, but this will mean the request will take longer to process so it is better to lodge the form with the correct agency.

It is useful to discuss a proposed access to information request with the agency's freedom of information or right to information officer before lodging the application. This is especially important when fees and charges apply, and extra costs may be incurred if the application is vague or poorly drafted. Vague or poor drafting may also lead to a refusal to process the application because it unreasonably diverts resources or interferes with the minister's performance (s 24 Freedom of Information Act).

Cost for Commonwealth freedom of information requests

There is no application fee for a Commonwealth freedom of information request.

However, the *Freedom of Information (Charges) Regulations 2019* (Cth) set out certain charges that may apply to various activities involved in processing a request. These charges are outlined in sch 1 to the Regulations.

Queensland Government documents

Under the Right to Information Act, a request for access to information must be made using the Right to Information and Privacy Application online form available from the Queensland Government's Right to Information website.

The application must include information about the documents requested so that the government agency can identify them (s 24 Right to Information Act). Agencies must help the applicant to frame the access request in a way that enables the agency to identify the documents requested. It

is useful to discuss the proposed access to information access with the agency's right to information officer before lodging the application.

The application must also include an address to which the agency can send notices about the request for access to information. This does not need to be the applicant's home address.

Cost for Queensland right to information requests

There is an application fee for access to information requests lodged with a Queensland agency or minister. The amount payable can be found in pt 3 reg 4 of the RTI Regulation.

A processing charge is the cost of 'searching for or retrieving the document' and making a decision about the application (s 56 Right to Information Act). The processing fees and charges are outlined in pt 3 of the RTI Regulation.

The processing charge may be waived if the agency or minister has delayed it or if the applicant demonstrates financial hardship (ss 65, 66 Right to Information Act). The Queensland Information Commissioner may also waive processing charges at external review.

An access charge is the cost of giving access to the document. Access charges may include:

- copies of documents as a black and white A4 photocopy
- cost incurred to engage another entity to search for and retrieve the document
- cost incurred to relocate a document
- cost of transcribing a recording or preparing a written document.

The agency or minister will provide the applicant with a written estimate of how much the application will cost. Access charges may be waived if the applicant demonstrates financial hardship (s 66 Right to Information Act). Special consideration in relation to fees may be given to non-profit organisations.

How Government Agencies Deal with Freedom of Information and Right to Information Requests

Commonwealth Government agencies

At the federal level, government agencies and ministers must acknowledge receipt of an access to information application within 14 days. If a request is transferred to another agency, the agency making the transfer must inform the applicant.

Under Commonwealth legislation, government agencies or ministers are obliged to:

- collect and locate all documents relevant to the request

- consult with any parties (including other government agencies) whose rights may be affected by disclosure
- reach a decision and inform the applicant within specified time limits set in the legislation
- provide reasons if a decision is made to refuse a request for access to information.

The relevant agency or minister has 30 days after it receives the request to take all reasonable steps to notify the applicant of a decision (s 15(5)(b) Freedom of Information Act). However, the Australian Information Commissioner may grant an extension of time to the relevant agency or minister to process a request.

Queensland Government agencies

The government agency or minister is not required to contact an applicant when a valid application is received or if a request is transferred to another agency, although sending an acknowledgement letter is considered good practice.

If a person makes an application for a document, the agency or minister will decide whether to give access to the document and whether there will be a charge. The applicant will be provided with a written notice of the decision.

There are reasons why an agency or minister may refuse access to a document. These reasons include that (s 47(3) Right to Information Act):

- the document relates to exempt information. The types of exempt information are listed in sch 3 of the Right to Information Act
- disclosure of the information would not be in the public interest
- disclosure of information about a child would not be in the child's best interests.
- disclosure of health care information would not be prejudicial to the physical or mental health or wellbeing of the applicant
- the document does not exist or cannot be located.
- the document can be accessed another way. This includes information that is publicly available in a library or in public archives.

The agency or minister has 25 business days to make a decision about the application (s 18(1) Right to Information Act). However, there are a number of events that stop the clock on the 25-business-day period (s 18(2) Right to Information Act). This includes:

- the period of time between when an applicant receives a notice of the fee estimate and for processing their request, and when an applicant confirms or amends their application
- when an application is transferred from one government agency or minister to another

- if the applicant agrees an additional time for the agency or minister to consider the application
- if the agency or minister consults a third party likely to be affected by the disclosure of the information for which the applicant seeks access
- if the agency or minister gives a notice to the applicant refusing to deal with the application.

How Government Agencies Provide the Information

Commonwealth Government agencies

Under the Freedom of Information Act, there are a number of ways in which the requested information will be provided by the agency or minister (s 20). Forms of access are:

- providing an opportunity to inspect the document
- giving a copy of the document to the applicant
- making arrangements for the applicant to hear sound recordings or view visual images
- providing the applicant with a written transcript.

Access in a particular form requested by the applicant may be refused where it would unreasonably interfere with the operations of an agency or minister, cause detriment to the preservation of the document or infringe copyright owned by another party. Access must then be given in another form. Charges for providing the material in another form cannot exceed what it would have cost to provide the material in the form requested.

It is also possible that the agency or minister may decide to prepare an edited (also known as redacted) copy of the document requested (s 22 Freedom of Information Act). The agency or minister can delete certain information from the document, but notice must be given to the applicant stating that the document was edited and the reasons why the deletions were made.

Queensland Government agencies

Under the Right to Information Act, there are number of ways in which the requested information will be provided by the agency or minister (s 68 Right to Information Act). Similar to the Freedom of Information Act, forms of access include inspecting or receiving the document, hearing or viewing multimedia or being provided with a written transcript.

If an application for access to information is successful, the applicant can expect to access the document within 40 business days after the date of the decision, unless the agency or minister has specified an additional period (s 69 Right to Information Act).

The agency or minister may delete information from the document before giving access to the applicant. Reasons for deletions include where the information is irrelevant or exempt (ss 73, 74 Right to Information Act), and where disclosure of certain information would be contrary to the public interest, a child's best interest or the applicant's best interests in relation to health care information (ss 75, 75A, 75B Right to Information Act).

Documents that may not be Released

Documents that a Commonwealth Government agency will not release

There are numerous limits on the type of documents that will be released following an access request. Some examples of documents that will not be released include (s 12 Freedom of Information Act):

- documents already publicly available (e.g. documents that are in public libraries)
- documents available under specialised access regimes (e.g. an administrative scheme established in an agency to provide access to specified documents).

Importantly, under the Freedom of Information Act, there are documents on certain topics that are 'exempt documents'. This means that access to the document is not required to be given by the Act and it will not be released (s 11A(4) Freedom of Information Act).

Exempt documents are those on national security, defence or international relations, Cabinet or Parliamentary Budget Office documents, documents affecting enforcement of law and protection of public safety, documents covered by secrecy provisions, legal professional privilege or documents obtained in confidence, documents where disclosure would be in contempt of parliament or in contempt of a court, documents that disclose trade secrets or commercially valuable information or documents related to the electoral rolls.

It is relevant to note that the exempt categories are not absolute. The Freedom of Information Act provides that no provision in the legislation is intended to prevent or discourage an agency or minister from releasing material if another law gives them power to release the information (s 3A Freedom of Information Act).

Documents that a Commonwealth Government agency may or may not release

Under the Freedom of Information Act, there are types of 'conditionally exempt documents' (s 11A(5)). 'Conditionally exempt documents' are documents that access must be provided to, unless release of the document would be contrary to the public interest. According to the Freedom of Information Act, conditionally exempt documents include:

- documents regarding relations between the Commonwealth and a state (s 47B)
- documents containing deliberative matter (s 47C)
- documents regarding financial or property interests of the Commonwealth (s 47D)
- documents regarding certain operations of government agencies (s 47E)
- documents containing personal information of a third party (s 47F)
- business documents (s 47G)
- research documents (s 47H)
- documents that, if disclosed, would have a substantial adverse effect on Australia's economy (s 47J).

Documents that a Queensland Government agency will not release

There are numerous limits on the type of documents that will be released following an access request. Some examples of documents that will not be released include:

- documents that are available by other means
- documents available under specialised access schemes
- exempt documents.

Schedule 3 of the Right to Information Act lists the types of exempt documents. Some examples of exempt documents include:

- matters of the Cabinet or Executive Council
- budgetary information for local governments
- information that, if disclosed, would be contempt of parliament or contempt of court
- information that would not be admissible in legal proceedings because it is covered by legal professional privilege
- information communicated in confidence
- national or state security information
- law enforcement or public safety information (exceptions apply)
- information relating to investment incentive schemes
- any other information where disclosure is prohibited by a law in Queensland.

Similar to the Commonwealth system, the secrecy provision for these exempt categories is not absolute. The Right to Information Act also provides that it does not intend to prevent or

discourage an agency or minister from releasing material if it can be done properly or if it is otherwise permitted or required by law (s 4).

Public Interest Test

Commonwealth Government documents

The Freedom of Information Act requires the agency or minister to weigh public interest factors for and against disclosure.

Factors that favour release of Commonwealth information are where disclosure would inform debate on a matter of public importance or would promote effective oversight of public expenditure (s 11B(3) Freedom of Information Act).

When considering public interest, the agency or minister must not consider whether the person who created the document was of high seniority within the agency or whether access to the document could result in (s 11B(4) Freedom of Information Act):

- embarrassment to the Commonwealth Government
- loss of confidence in the Commonwealth Government
- any person misinterpreting or misunderstanding the document
- confusion or unnecessary debate.

Queensland Government documents

For most Queensland documents, whether or not access is granted is determined by a statutory public interest test. This requires the agency or minister to weigh public interest factors for and against disclosure. Under Queensland law, the agency or minister needs to identify irrelevant and relevant factors for disclosure and non-disclosure and then balance the relevant factors to make a decision (sch 4 Right to Information Act).

Irrelevant factors include embarrassment to the government, loss of confidence in the government, a reasonable expectation that the applicant would misunderstand the document and whether the person who created the document was of high seniority within the agency.

Factors favouring disclosure in the public interest include where the information release could reasonably be expected to:

- promote open discussion of public affairs
- enhance the government's accountability
- contribute to the positive and informed debate on important issues or matters of serious interest.

Factors favouring non-disclosure in the public interest include where the release of the information could prejudice the:

- private, business, professional, commercial or financial affairs of an entity
- protection of an individual's right to privacy.

Other harm factors that the agency or minister may consider include whether the release of information would:

- cause damage to relations with other governments
- affect investigations by ombudsman or auditor-general
- affect operations of agencies.

Appealing a Freedom of Information or Right to Information Decision

Appealing a Commonwealth freedom of information decision

The Commonwealth legislation contains extensive provisions about appeal rights. These apply to any person affected by particular decisions of an agency or minister made when dealing with a request. They include:

- an applicant who has been refused access
- a third party who, after being consulted by an agency about an access request, objects to an agency's decision to disclose
- a person whose request for amendment of personal records was denied (see below)
- a person who is questioning the decision about the fees and charges to be paid.

An internal review of the initial decision must be conducted by another officer of the agency who is at least as senior as the original decision maker. Under the Freedom of Information Act, an application for internal review must be in writing and be made within 30 days of notification of the original decision.

External review of Commonwealth freedom of information decisions

Importantly, the Commonwealth legislation allows a person to apply for external review to the Australian Information Commissioner (pt 7 Freedom of Information Act) without having first applied for internal review. Despite being able to go directly to an external review, it is often preferable for a person to seek internal review first as it is quicker than an external review.

External review by the Australian Information Commissioner is a merit review of the original decision. For a fuller discussion on merit review please see the chapter on Complaints about Government – Administrative Law.

An application for external review to the Australian Information Commissioner should be made in writing within 60 days of the notice of decision being given to the applicant (s 54S(1) Freedom of Information Act).

The Administrative Appeals Tribunal (AAT) can review certain decisions made by the Australian Information Commissioner (s 57A Freedom of Information Act). An application to the AAT must be made within 28 days of the Information Commissioner's decision. Both the Australian Information Commissioner and the AAT can also refer questions of law to the Federal Court of Australia during a merit review. A party to a review also has the right to appeal to the Federal Court of Australia on a question of law from a decision of the Australian Information Commissioner or the AAT.

[Making a complaint about the handling of a Commonwealth freedom of information request](#)

The Australian Information Commissioner can deal with complaints about the handling of freedom of information requests. In addition, the Commonwealth Ombudsman may also investigate complaints about agency handling of freedom of information requests.

[Appealing a Queensland right to information decision](#)

Similar to the Commonwealth system, Queensland legislation provides appeal rights to applicants regarding their information access request. Appeal rights apply to reviewable decisions.

'Reviewable decisions' are defined in sch 5 of the Right to Information Act. They include decisions about the right to information application, the amount of access given to requested information and charges.

A review of the initial decision must be conducted by another officer of the agency who is at least as senior as the original decision maker.

A written application for an internal review must be submitted within 20 business days of notification of the original decision (s 82 Right to Information Act).

Importantly, Queensland legislation allows a person to apply for external review to the Queensland Information Commissioner (s 85 Right to Information Act, s 99 Information Privacy Act) without having first applied for internal review.

Despite being able to go directly to an external review, it is often preferable for a person to seek internal review first as it is quicker than external review.

External review of Queensland right to information decisions

External review by the Queensland Information Commissioner is a merit review of the original decision. In Queensland under both the Right to Information Act and the Information Privacy Act, an application for external review must be lodged in writing to the office of the Queensland Information Commissioner within 20 business days of the written notice of the decision (s 88 Right to Information Act, s 101 Information Privacy Act). The Queensland Information Commissioner may also waive processing charges at external review due to the agency or minister having delayed their decision (ss 65, 93(2) Right to Information Act).

The Queensland Information Commissioner can refer questions of law arising on an external review to the Queensland Civil and Administrative Tribunal (QCAT) for determination (s 118 Right to Information Act, s 131 Information Privacy Act). The Queensland legislation also provides an avenue for appeal to QCAT against a decision of the Queensland Information Commissioner. Such an appeal may only be on a question of law and must be filed within 20 business days after the date of the decision being appealed.

Making a complaint about the handling of a Queensland right to information request

The Queensland Information Commissioner can deal with complaints about the handling of right to information requests. In Queensland, complaints of agency handling of right to information requests can also be directed to the Queensland Ombudsman.

Legal Notices

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