**Right to Information and Privacy**

Access and Amendment Application Procedure

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# 1. Purpose

The procedure outlines the responsibilities of all employees, third party contractors and volunteers working for QCS regarding managing applications made under the *Right to Information Act 2009* (RTI Act).

# 2. Object of the RTI Act

The primary object of the RTI Act is to give a right of access to information in the government’s possession or under the control government’s control unless, on balance, it is contrary to the public interest to give the access.

# 3. Responsibilities

The RTI Act has implications for all employees (including permanent, temporary and casual) and any third-party contractor or volunteer working for QCS because they are all involved in the process of creating and managing records and may also be required to search for documents pursuant to an RTI Act access application.

**Employees, third party contractors or volunteers**

Action access application requests in accordance with this procedure.

**Manager Director or above**

Assessing right to information access applications in accordance with this procedure.

**Right to Information and Information Privacy Decision Makers**

# Make decisions on access and amendment applications in accordance with their respective delegations.

# 4. Policy

This Procedure should be read with the Access and Amendment Application Policy, including the definitions contained in that Policy.

Unless a contrary intention is obvious, in this procedure, “document” should be read as referring to “Document of QCS” or “Document of the Minister” as defined in that Policy.

# 5. Process

**Information release, access and use**

The department provides government information to the public, unless on balance it is contrary to the public interest to do so.

Employees, third party contractors or volunteers receiving a request for information following an access application made under the RTI Act are to:

* take all reasonable steps to locate relevant documents (both electronic and hardcopy) and respond by the due date set by Right to Information and Privacy Group.
* send complete copies of relevant documents.
* keep an accurate record of time spent searching for and retrieving the documents. However, time spent by employees, third party contractors or volunteers photocopying, collating or searching for documents when they should have been stored in a particular place, but are not found, cannot be recorded by the employee undertaking these tasks.

If all documents are not provided an applicant can take the matter on review to the Office of the Information Commissioner (OIC). The OIC has a broad range of powers including requiring agency officers to conduct further searches, produce documents and (in rare cases) appear before the Information Commissioner.

An employee who has been delegated in their role within the Right to Information and Privacy Group is to:

* provide advice on right to information and information privacy requests
* co-ordinate, within the required timeframes, approval processes including searching for the required documents and consulting when required
* create records within an authorised recordkeeping system of the original request and documents obtained.

Manager, Director or above must:

* ensure information released on the disclosure log website is accurate, relevant and has no copyright or other agreements restricting its release and publication
* identify information for consideration to be published on QCS’s Right to Information website.

# 6. Creating a new application or amendment file

When a new access application or amendment application is received administration officers:

* create a file in the RTI CMS database (CMS)
* create an electronic application file in R: drive on the QCS network with the corresponding reference number created in CMS
* enter the details of the applicant/agent, and
* allocate the file for scoping in CMS.

# 7. Access applications

## 7.1 Who can make an access application?

An access application may be made by:

* a person resident in Australia, whether or not they are an Australian citizen
* a person resident 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 (or a person on their behalf).

Applicants do not need to provide reasons for applying for documents.

## 7.2 Personal or Non-Personal application?

The *Information Privacy Act 2009* defines personal information as:

*Personal information means information or an opinion about an identified individual or an individual who is reasonably identifiable from the information or opinion-*

1. *whether the information or opinion is true or not; and*
2. *whether the information or opinion is recorded in a material form or not.*

**Personal applications**: application that pertains solely to documents containing the applicant’s personal information.

**Non-Personal applications**: applications requesting access to documents containing non-personal information.

**Mixed applications:** if an application includes both personal and non-personal information.

Upon receipt of an application, the Right to Information and Privacy Group will assess the application as either personal; non-personal or mixed.

If it is considered, based on scope of the application, the application fee is payable the Right to Information and Privacy Group will contact the applicant to advise accordingly.

The application will not be valid until the application fee has been paid.

There are times where it will not be possible to make a proper assessment of the documents relevant to an application until the requested documents have been provided to the Right to Information and Privacy Group. At that stage, if it is considered the application fee is applicable, the Right to Information and Privacy Group will contact the applicant to advise the application fee is required.

## 7.3 Is the application compliant?

The initial assessment of an application is made by the Right to Information and Privacy Group. This is done by completing a scoping sheet (attachment 1) which outlines: whether the application is compliant; if not compliant, the requirements to make it compliant; and, when compliant, identifies relevant QCS business unit where searches are to be sent.

If the application is considered not compliant the Right to Information and Privacy Group will liaise with the applicant to assist them to make a compliant application. For an application to be compliant, it must satisfy the requirements in section 24 of the RTI Act. These are outlined below:

* must be submitted in writing
* the use of the approved form is no longer mandatory, however QCS may still provide the form for convenience
* payment of the current application fee for non-personal applications
* provides sufficient detail to enable accurate identification of the requested documents
* provides an address to which written notices may be sent
* for personal information access applications, applicants must provide a certified copy of their identification within 10 business days of the initial application
* provide an agent authority where the application is being made by an agent acting on behalf of the applicant and the application is for personal information of the applicant.

The access application is available on the Whole of Government Right to Information website at Right to Information and Information Privacy (www.rti.qld.gov.au).

## 7.4 What can be applied for?

An application can be made under the RTI Act for a ‘document of an agency’.

The definition of document, as set out in the policy, is very broad and includes hard copy files, electronic files, text messages, computer printouts, emails, work diaries, maps, plans, photographs, post it notes, audio recordings or video recordings 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.

Section 27 of the RTI Act provides that an access application is taken 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. However, it may, at its discretion, negotiate with the applicant to create a document containing the requested information. No processing or access charge is payable in connection with obtaining access to the document, and there is no entitlement to a review under the RTI Act of the agency’s decision about the document.

## 7.5 Transfer of an application

Access applications made to one agency can be transferred to another agency. An application transferred from one agency to another is taken to have been made to the other agency. A transfer can only occur if the other agency consents to it.

The initial assessment of whether an application should be transferred to another agency or accept a transfer from another agency will be made by the Right to Information and Privacy Group.

## 7.6 Who makes the decision?

The QCS Commissioner delegates the power to deal with applications to designated positions within the Right to Information and Privacy Group under an instrument of delegation made pursuant to s.30(2) of the RTI Act.

Applications will be allocated to authorised delegated decision makers within the Right to Information and Privacy Group.

## 7.7 Timeframes

The standard timeframe for processing an application is 25 business days. The processing period can be extended, for example, if further processing time is required, consultations with external third parties are required (adding 10 business days to processing time), or if certain steps need to be taken in relation to fees and charges.

For further information regarding timeframes refer to the Information Commissioner’s guidelines ([How to calculate timeframes | Office of the Information Commissioner Queensland (oic.qld.gov.au)](https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/how-to-calculate-timeframes)

## 7.8 Searches

Thorough searches for all requested documents are coordinated by the Right to Information and Privacy Group by sending a search request (attachment 2) to each of the business unit/s as identified in the scoping sheet. Searches include:

* QCS archives/records
* Queensland State Archives
* Correctional Centre files
* Community Corrections files
* Video/audio recordings
* hard-copy files
* electronic files
* consulting with identified employees who may be or may have been involved in a particular matter to determine whether they possess any relevant records.

The Right to Information and Privacy Group maintains a specialised database and creates an individual electronic file within the QCS R: drive for each application. The electronic application file contains records of all searches conducted, search responses and files/documents that were located/provided in response to the application.

If there is any doubt about the types or categories of documents to which the applicant is seeking access, the Right to Information and Privacy Group will contact the applicant, at the earliest possible opportunity, to discuss the terms of the application and to clarify the documents to which access is sought.

Where it is not possible to establish the location of a document or file because it has been lost, is missing or has been destroyed, the Right to Information and Privacy Group documents this advice and forwards the information to the Information Management Unit in accordance with the *Public Records Act 2023* and the Queensland Corrective Services Retention and Disposal Schedule ([Queensland Corrective Services retention and disposal schedule (forgov.qld.gov.au)](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0031/188842/qld-corrective-services-retention-disposal-schedule.pdf)).

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.

An applicant must be advised that documents either: cannot be located; or do not exist and the reasons why in their notice of decision.

## 7.09 Charges Estimate Notice

The Charge Estimate Notice (CEN) is defined in section 36(7) of the RTI Act.

**What is a Charge Estimate Notice:**

A CEN is a written statement of the estimated processing and access charges applicable for non-personal applications.

A CEN is provided to the applicant when it is estimated that QCS will spend more than 5 hours processing the application.

**Processing and access charges:**

The processing charge is based on the time it takes QCS to process a non-personal application. The processing charge may include costs for: time taken for identified business units to search and retrieve relevant documents; scan relevant paper-documents into PDF format; review, mark and apply legislation in accordance with the decision making process.

An access charge is the cost for providing documents to an applicant in photocopy format. There is no access charge for documents provided in electronic format.

There are no processing charges applicable for documents relating to the personal information of the applicant.

**Consultation:**

When an applicant receives a CEN they may consult with QCS with a view to narrowing the application to reduce the estimated applicable charges (section 36(2)).

On receipt of a CEN the applicant is provided with the following options:

* respond to the CEN within the prescribed period:
	+ confirming the terms of the application and accepting the costs
	+ narrowing the terms of the application to reduce costs
	+ withdrawing the application
	+ requesting a waiver of charges
* not responding to the CEN.

There is no provision for the applicant to expand or alter the terms of their application for new documents during the CEN process.

Applicants have 20 business days to respond to the CEN or any longer period agreed between QCS and the applicant.

If the applicant does not confirm, narrow or withdraw their application within the prescribed period, it is taken the applicant has withdrawn their application at the end of the prescribed period.

**Confirm the terms of the application:**

If the applicant responds within the prescribed period and confirms the terms of the application, the application will continue to be processed.

**Narrow the terms of the application:**

If the applicant responds within the prescribed period and narrows the terms of the application, QCS must, before the end of the processing period, provide the applicant with a second CEN. Where a second CEN is provided, the applicant is permitted a further opportunity to consult with QCS. The RTI Act provides only two CEN’s may be provided to an applicant in one application.

**Waiver of processing and access charges:**

The processing and access charges may be waived where the applicant is in financial hardship and the requirements of the RTI Act have been met. The applicant must provide a copy of their current concession card, being one of the following:

* Centrelink Pensioner Concession Card
* Veterans’ Affairs Pensioner Concession Card
* Centrelink Health Care Card.

Section 67 of the RTI Act enables a non-profit organisation to apply to the Information Commissioner for financial hardship.

Refer to the Information Commissioner’s guidelines regarding the CEN process ([Fees and charges | Office of the Information Commissioner Queensland (oic.qld.gov.au)](https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/fees-and-charges)

# 8. Examining and marking up documents

When the requested documents have been provided to the Right to Information and Privacy Group they are considered by a delegated decision-maker in accordance with the exemption factors and/or contrary to public interest factors as outlined in the RTI Act.

## 8.1 Consultation with third parties

A decision-maker must consult with a third party where the decision-maker is considering releasing all or part of a document that could reasonably be expected to be of concern to a person, agency or government.

The decision-maker is not required to consult where it is decided that the information/document will not be released.

If a third party objects to disclosure of the document, and the decision-maker decides to release the document, the third party has review rights. Access to the document must be deferred until the third party has had an opportunity to exercise their review rights.

The identity of the applicant may be disclosed to the third party where the applicant agrees, or the disclosure is authorised or required by law (see section 37 of the RTI Act).

## 8.2 Extension of time

QCS is required to make a decision on an access application within 25 business days (processing period). However, this timeframe can be extended when an access application is not able to be finalised within 25 business days.

A request for extension must be made before the end of the processing period and the decision-maker can continue processing the application until a response is received from the applicant.

An applicant’s agreement is not necessary to rely on the additional time requested.

## 8.3 Grounds for refusing access to documents

There is a pro-disclosure bias in the RTI Act and the grounds upon which access may be refused are to be interpreted narrowly. The RTI Act states that access should be given unless, on balance, the information contains exempt information or it would be contrary to the public interest to do so. An agency may also give access even where there are grounds on which access may be refused.

The decision-maker may refuse access:

* to the extent the document comprises exempt information
* to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest
* if the document is sought under an application made by or for a child, to the extent the document comprises the child’s personal information and disclosure would not be in the child’s best interests
* if the document comprises an applicant’s healthcare information, the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant
* if the document is non-existent or unable to be located, or if other access to the document is available.

## 8.4 Notice of decision

By the end of the processing period, a decision-maker must provide the applicant with a notice of decision which sets out:

* the decision and the reasons for the decision (including a decision to refuse to deal with the application)
* the name and designation of the officer who made the decision
* the date of the decision
* an itemisation of any processing and access charges payable by the applicant
* the period within which the applicant may access the document
* details of review rights.

If the decision is to release information contrary to the objections of a third party, the third party must also be given a copy of the decision and advised of their review rights.

## 8.5 Access to documents

Access to documents should be given only after receipt of payment for any processing or access charges that are payable by the applicant, if there is no third party review.

Access is provided in the form requested by the applicant, such as:

* inspect documents
* obtain photocopies of documents
* receive documents via email
* receive documents on DVD or CD.

## 8.6 Disclosure log

All public sector agencies, including departments, local governments and Ministers must maintain a disclosure log. Responsibility for this task in QCS lies with the Manager, Right to Information and Privacy Group.

Agencies are required to publish documents on their disclosure log unless the document contains the applicant’s personal information; or information that, if included, would unreasonably invade an individual’s privacy.

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).

## 8.7 File closure

Upon finalisation of an application file, the decision-maker is responsible for ensuring the electronic file is up to date. The decision-maker must ensure:

* the electronic file contains all relevant documents and correspondence
* a copy of the notice of decision is on the file
* a copy of all documents relating to the processing of the application
* documents that have been partially released or fully refused must be clearly marked indicating the refused information.

## 8.8 Internal and external reviews

If an applicant is dissatisfied with the initial decision, they may apply, in writing, for an internal or external review.

**Internal Reviews:**

The QCS Commissioner has delegated the power to deal with internal review applications to specified officers in the Right to Information Group under an instrument of delegation made pursuant to section 30(2) of the RTI Act.

Internal review applications are referred to the Manager, Right to Information and Privacy Group. After opening an internal review file and acknowledging the application, the Manager, Right to Information and Privacy Group may refer the file to a delegated internal review decision-maker.

The internal review decision-maker must not be the original decision-maker and must be no less senior than the original decision-maker.

A decision must be made on an internal review within 20 business days after the date of the notice of decision, although extra processing time may be sought upon agreement with the applicant.

**External Reviews:**

An applicant may also submit a written application to the Information Commissioner for external review.

External Reviews are managed by the Information Commissioner in consultation with the delegated decision maker within the Right to Information and Privacy Group.

An applicant may 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.

There are no fees associated with either an internal or external review.

# 9. Amendment applications

## 9.1 How to make an amendment application

An individual can apply for amendment of their personal information if they consider their information is: out of date, inaccurate, incomplete or misleading. No application or processing charges apply.

An amendment application must:

* be made in writing
* provide a certified copy of the applicant’s identification
* provide an authority if an agent is acting on behalf of the applicant
* relate only to the applicant’s personal information that is contained in QCS documents
* provide enough information about the document to enable it to be identified.

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.

The applicant should also clearly state how the information is inaccurate, incomplete, out of date, or misleading.

An individual must have previously accessed the document containing their personal information. This access does not need to have been under the RTI Act.

QCS will assess the amendment application and decide whether to amend the document/information.

## 9.2 Who makes the decision?

Officers within the Right to Information and Privacy Group have delegated power to deal with amendment applications under an instrument of delegation made pursuant to section 30(2) of the RTI Act.

## 9.3 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 within the processing time the agency is deemed to have made a decision refusing to amend the document.

## 9.4 Notice of decision

Before the end of the processing period, the decision-maker 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
* rights of review, including timeframes for seeking review.

## 9.5 Form of amendment

If the decision-maker decides to grant the amendment, this may be done by:

* altering the personal information, including by way of redaction
* adding an appropriate notation to the personal information.

Any notation must:

* state how the information is considered to be inaccurate, incomplete, out of date or misleading
* set out the information required to complete the information or bring it up to date if the decision-maker considers the information to be incomplete or out of 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 has been amended.

## 9.6 Notation if amendment refused

If the decision-maker refuses to amend the applicant’s personal information the applicant can request QCS to add a notation to the document that:

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

The decision-maker is not required to use the applicant’s exact wording in any notation.

## 9.7 Internal and external reviews

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

# 10. Systems

The Right to Information and Privacy Group maintains a dedicated database (CMS) to record all access and amendment applications. All templates required when processing applications are accessible within the database. The templates are accessible through the T: drive on the QCS network where the database is located. The templates are amended and updated when required by the Manager, Right to Information and Privacy Group.

Documents provided in response to an access or amendment application are maintained within the agency’s R: drive. There are three copies of the documents kept within the Right to Information and Privacy Group drive under separate folders: ‘Original’ version of the documents; ‘Marked’ version of the documents; and a ‘Final’ version which is the redacted copy of the documents.

# 11. Reporting

Right to Information and Privacy Group provides a weekly report to senior management outlining:

* the number of applications opened and closed
* the number of applications of internal and external reviews opened and closed
* a running total of finalised decisions and closed reviews during the financial year
* the number of requests for extensions opened and closed, including any denied by an applicant
* the percentage of new applications entered into the database within two business days of receipt
* the percentage of searches sent within three business days of receipt of a valid application
* the number of ‘Of Note’ applications being managed.

# 12. Related documents

This procedure should be read in conjunction with the agency’s Access and Amendment Application Policy.

The workflows for the processing of access and amendment applications and the internal review process are outlined in Attachments 3, 4 and 5.

The Office of the Information Commissioner has produced detailed guidelines on the operation of the RTI Act which is available from the Office of the Information Commissioner’s website ([Office of the Information Commissioner Queensland | Protecting your right to information and privacy (oic.qld.gov.au)](https://www.oic.qld.gov.au/)).

# 13. Publication scheme

A publication scheme is a collection of information that must be published on an agency’s website. Publication schemes must contain details about:

* the agency’s structure and functions on how the agency’s functions affect members of the public
* any arrangements that enable members of the public to engage with the agency’s functions
* the types of information held by the agency
* the types of information the agency makes publicly available and how that information is made available
* procedures for asking for information, including, for example, any fee or charges that may be applicable.

Agencies are not required to include exempt or contrary to the public interest information in a publication scheme.

The publication scheme should include appropriate contact details.

# 14. Procedure Management

**14.1. Procedure Owner:** Deputy Commissioner, Workforce Culture, Integrity and Capability

**14.2. Procedure Implementer:** Assistant Commissioner – General Counsel, Policy and Legal Command

# 15. Document Control

**Document information and review**

A review of this document will be conducted every three years or at times of critical content changes.

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| --- | --- | --- | --- |
| Security Classification: | Official | Review frequency: | 3 years |
|  |  |  |  |
|  |  |  |  |
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