



# Teachers' rights in relation to departmental records about them

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Teachers are entitled to access documents held about them by the Department of Education (DoE), particularly documents which are detrimental to their interests. Teachers can ring the regional office and arrange a time to review documents.

Teachers' employment is mainly regulated by the *Public Sector Act 2022* (Qld) ("the Act") and the *Public Sector Regulation 2023* (Qld) ("the Regulation") made under that Act.

## Employee records

Employee records which can be accessed include:

- (a) reports, correspondence items or other documents about the employee's work performance, work conduct or work history
- (b) medical reports about the employee
- (c) written allegations of misconduct against the employee.

## DoE obligations

Pursuant to regulation 11 of the Regulation, if the Department of Education intends to use an employee record in a way that could be considered detrimental to the employee's interests or to place a record on the employee's file which could be considered detrimental to the employee's interests, then, at least 14 days before taking the detrimental action, the Department must ensure that:

- (a) the employee is given the opportunity to read the record and to acknowledge having read it by initialling it
- (b) the employee is given a copy of the record
- (c) if the employee has refused to read the record or to acknowledge having read it by initialling it, the refusal is noted on the record

- (d) the employee is given the opportunity to respond in writing at any time to the record's contents

- (e) any written response by the employee is attached to the record.

These provisions provide some important safeguards for teachers in relation to documents adverse to their interests which come into the possession of DoE.

It is important to note subparagraph (e), which provides that the Department must ensure that any written response is attached to the record. If you have any concerns that this Regulation is not being complied with, you should contact the Union.

## Exemptions

Under regulation 9 of the Regulation, there are some crucial exemptions to the documents covered. These include:

- (a) a medical report about the employee which indicates that disclosure of information in it to the employee might be prejudicial to the employee's mental or physical health or wellbeing
- (b) an employee assistance provider document about the employee (discussed below)
- (c) a *Public Interest Disclosure Act 2010* (Qld) document about the employee
- (d) a document about the employee concerning suspected official misconduct within the meaning of the *Crime and Corruption Act 2001* (Qld) or its investigation
- (e) a document about the employee concerning a suspected criminal offence or its investigation
- (f) a document to which legal professional privilege applies.

An "employee assistance provider document", as mentioned in subparagraph (b), is a document about a teacher created by a professional counsellor for the primary purpose of providing a professional counselling service to the teacher.

### Access to employee records

Regulation 13 of the Regulation provides for access to records about an employee held by the DoE or by another government department. Regulation 13 states:

- (2) The prescribed employee may, on request-
  - (a) inspect the record; or
  - (b) take an extract from, or copy, the record.
- (3) ...the inspection, taking of the extract or copying (the **requested action**) must be allowed at a time and place convenient to the chief executive within 21 days after the request.

### Existing investigation exemption

In addition to the above exemptions, if the DoE reasonably considers that giving access to a detrimental employee record would be likely to prejudice an "existing relevant investigation or inquiry", it will not have to give such access until the earlier of:

- (a) the employing authority no longer reasonably considers that giving the employee access to the record would be likely to prejudice a relevant investigation or inquiry
- (b) the end of the period of six months after the employee makes their request.

Importantly, a "relevant investigation or inquiry" is defined to mean an investigation into:

- (a) an allegation of conduct that, if proved, may make a public service employee liable to disciplinary action; or
- (b) a grievance involving a public service employee lodged under a directive or industrial instrument.

### Further possible exemptions

Subsection 13(5) of the Regulation provides that the Chief Executive may refuse the employee access to all or part of the record in the circumstances stated under the relevant directive of the Chief Executive of Queensland Public Sector Commission.

As at the date of printing, there is no current directive.

Past experience suggests access may be denied, or only partial access permitted, to an employee record containing the personal information of a third party.

### Summary

While at first glance the Regulations appear to provide valuable rights to teachers in regards to the ability to access and respond to detrimental records held by DoE, as outlined above there are a number of significant exemptions which may apply.

If you have any difficulties in exercising your rights under the above provisions, you should inform the Union, which will be able to provide assistance and monitor compliance.

If you have concerns, apply to the General Secretary in writing for assistance. It is important to bear in mind that a document which may not be accessible under these provisions may be accessible under the provisions of the *Right to Information Act 2009* (Qld).