



Right to Information Act (Queensland)

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Basic concepts

The *Right to Information Act 2009* (Qld) (“the Act”) replaces the *Freedom of Information Act 1992* (Qld). The Act modifies the freedom of information law which was introduced 20 years ago as part of the reform of Queensland public sector law following the Fitzgerald reform process.

The preamble to the Act refers to the importance in a free and democratic society of “open discussion of public affairs” and a number of other matters, including the notion that “information in the government’s possession or under the government’s control is a public resource”.

Section 3 sets out the primary objective of the Act, and reads:

- “(1) The primary object of this Act is to give a right of access to information in the government’s possession or under the government’s control unless, on balance, it is contrary to the public interest to give the access.
- (2) The Act must be applied and interpreted to further the primary object.”

Importantly, section 4 explicitly states that the Act is not intended to prevent or discourage the publication of information, or the giving of access to documents, if that can properly be done or is permitted or required to be done by law.

This is an important provision, as there has in the past been a tendency in some agencies to refuse to give information except when compelled to do so under the Act.

Consistent with sections 3 and 4 is section 23, headed “Right to be given access to particular documents”, which reads, so far as relevant:

“Subject to this Act, a person has a right to be given access under this Act to:

- (a) documents of an agency; and
- (b) documents of a Minister.”

The term “agency” is defined in section 14 of the Act, but generally speaking, means a department, a local government, a public authority, a government-owned corporation, or a subsidiary of a government-owned corporation. The Department of Education indisputably falls within this term.

Limits on the right of access

There are of course other important public policy considerations which sometimes must be balanced against the basic principles of the Act to determine whether access should be granted. An important statement of principle in relation to this balancing exercise occurs in section 44 of the Act, which reads as follows:

- “(1) It is the Parliament’s intention that if an access application is made to an agency or Minister for a document, the agency or Minister should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.
- (2) The purpose of this part is to help the agency or Minister decide whether giving access would, on balance, be contrary to the public interest by -
 - (a) setting out in schedule 3 types of information [referred to as ‘Exempt information’] the disclosure of which the Parliament has considered would,

- on balance, be contrary to the public interest; and
- (b) setting out in section 49 the steps, and, in schedule 4, factors, for deciding, for other types of information, whether disclosure would, on balance, be contrary to the public interest.
- (3) Also, sections 50 and 51 set out circumstances concerning information about a child and personal healthcare information about an applicant in which the Parliament has stated its intention about what is in the best interests of the child and applicant.
- (4) However, it is the Parliament's intention that this Act should be administered with a pro-disclosure bias and an agency or Minister may give access to a document even if this act provides that access to the document may be refused."

Section 49 gives the concept of "contrary to the public interest". The section provides: -

- "(1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.
- (2) This section sets out the steps, and, in schedule 4, factors, the Parliament considers appropriate for deciding, for types of information (other than exempt information), whether disclosure would, on balance, be contrary to the public interest.
- (3) If it is relevant for an agency or Minister to consider whether, on balance, disclosure of information would be contrary to the public interest, the agency or Minister must undertake the following steps -
- (a) identify any factor that is irrelevant to deciding whether, on balance, disclosure of the information would be contrary to the public interest, including any factor mentioned in schedule 4, part 1 that applies in relation to the information (an **irrelevant factor**);
- (b) identify any factor favouring disclosure that applies in relation

to the information (**a relevant factor favouring disclosure**), including any factor mentioned in schedule 4, part 2;

- (c) identify any factor favouring nondisclosure that applies in relation to the information (**a relevant factor favouring nondisclosure**), including any factor mentioned in schedule 4, part 3 or 4;
- (d) disregard any irrelevant factor;
- (e) having regard to subsection (4), balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
- (f) decide whether, on balance, disclosure of the information would be contrary to the public interest;
- (g) unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information subject to this Act.
- (4) The factors mentioned in schedule 4, part 4 are factors where disclosure could reasonably be expected to cause a public interest harm (**harm factors**) but the fact that 1 or more of the relevant factors favouring nondisclosure is a harm factor does not of itself mean that, on balance, disclosure of the information would be contrary to the public interest.
- (5) However, despite an agency or Minister being able, under section 47(3)(b), to refuse access to all or part of a document, the agency or Minister may decide to give access."

Factors favouring nondisclosure in the public interest include, for example, information which may prejudice the private, business professional, commercial or financial affairs of entities or which could reasonably be expected to prejudice the protection of an individual's right to privacy.

An important general point

The motives of the person seeking the documents will rarely be relevant. They will only be relevant if they relate to a ground of exemption. What that means is that even "mischief makers" are entitled to exercise their rights under the Act.

Procedural issues

People seeking access to documents must make an application in writing to the relevant agency. Most agencies have an officer appointed as the right to information coordinator who is familiar with handling such matters, and information can be obtained from agencies as to the name and address of that officer.

The right to information officer then makes enquiries as to what documents are in existence, and makes a preliminary assessment as to whether any ground of exemption might apply and whether any person who may have an interest in making a submission that a ground of exemption applies ought to be contacted and given an opportunity to make a submission.

If you are an applicant or a person who is invited to make a submission in respect of someone else's application, it is important to read very carefully any correspondence received from the right to information coordinator and to ensure that time limits are complied with. **Rights can be lost by delay.** Advice can be sought from the Union in appropriate cases.

It is important to appreciate that the right to be consulted is not a right of veto. It is only a right to be given an opportunity to make a submission that a ground of exemption may apply. The Union regularly gives advice to members in relation to such opportunities to be heard on the question of whether a ground of exemption exists. The Act also provides for "internal review", that is for review of a decision on application for that review by an affected party by a more senior officer within the department. Again, correspondence referring to time limits should be complied with.

The Act also provides for "external review" to the Office of the Information Commissioner and again, correspondence will indicate the time limits which apply and the issues to be addressed.

In addition to access, copies of documents can be obtained.

For a copy of the Right to Information application form, go to:

[RIGHT TO INFORMATION PRIVACY ACCESS FOR M.pdf \(smartservice.qld.gov.au\)](#)

General conclusion

The importance of documentary access, whether one is an applicant or a person seeking to object to access being granted to another person, combined with the complexity of the legislation, makes it appropriate for members to seek advice if they are uncertain of the position. The Union regularly grants legal assistance to people in these circumstances.

Finally, it is important to bear in mind that the Act deals with access to documents. It does not deal with the legal consequences of the use of documents (e.g. the law of defamation), and advice will be needed in sensitive situations.