Information pack

Applications under the **Right to Information Act 2009** (RTI Act)

This information pack gives an overview of what you can expect to occur as the Department of Child Safety, Youth and Women (the department) processes your application for information under the RTI Act.

When an application is received by the department, we will:
- decide whether the application should be made and dealt with under the RTI Act or the IP Act (see page 2)
- decide whether the application is compliant with requirements (see page 3)
- decide whether we hold documents relevant to the request, or if the application should be dealt with by another agency (see page 2-3).

Once your application is confirmed as a compliant application under the RTI Act, you will receive an acknowledgement letter from us. We will then undertake searches in relevant locations within the department. We may need further information from you to help locate where relevant documents might be held.

We will also publish the terms of your application and the date upon which it became compliant, on the department’s disclosure log (see pages 9-10 about disclosure logs).

See page 3 for information about additional supporting information.

Once we have located the documents responsive to your request, we will issue you with a Charges Estimate Notice. See page 4 for more information about Charges Estimate Notices; and pages 6-7 for information about how Charges Estimate Notices affect application timeframes.

The Act may require us to consult with third parties about the release to you of information that concerns them. See page 7 for more information about third party consultation processes.

Each application is decided by a decision maker who will be in contact with you during the process. Once your application has been considered, you will be issued with a notice of the decision made and a statement of reasons for the decision. See pages 7-9 for information about the types of decisions that can be made under the Act.

In some circumstances, documents released under an access application may be published on the department’s disclosure log website. See pages 9-10 for more information about disclosure logs.

In most cases, you will have rights of review of the decision made on your application. You can apply for internal review by the department or external review by the Office of the Information Commissioner. See page 10 for more information about review.
Privacy notice

What is personal information?

Section 12 of the Information Privacy Act 2009 (IP Act) provides the following definition of personal information:

Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The Department of Child Safety, Youth and Women collects personal information for the purposes of processing applications under the RTI Act or IP Act. It will be used for purposes related to processing your application, searching records and conferring with relevant parties and for general administrative purposes including reporting, performance improvement and assessing statutory compliance. Your personal information will be managed in accordance with the IP Act.

Under the RTI and IP Acts, your personal information may be disclosed to other Queensland Government agencies for the purposes of transferring all or part of your application if necessary. It may also be disclosed to other parties for the purpose of ascertaining their views on disclosure of the documents to you, as provided for under the RTI and IP Acts. Your personal information may also be provided to monitoring and appeal bodies, including the Information Commissioner, for the purpose of participating in any external review or appeal processes relating to your application under the RTI or IP Acts, or for monitoring of the department's compliance with the legislation.

RTI Act and IP Act

What's the difference?

The RTI and IP Acts each give a person a right to access information held by Queensland Government agencies. Your application is likely to be handled under the RTI Act if you have applied for:

- access to the personal information of individuals other than you
- access to your own personal information and the personal information of other individuals
- corporate documents which do not contain personal information.

If you apply under the RTI Act an application fee applies (see pages 3-4 for more information about fees and charges). Your application is likely to be handled under the IP Act if you have applied for access to documents containing your own personal information. If you apply under the IP Act there is no application fee to be paid but other charges may be involved.

One application form is used for applications under both Acts – so if the application is made under the incorrect Act, you will be advised and you will be given the opportunity to change your application type or to change the type of information you are seeking.

Transfer of an application

If all, or part, of the documents relevant to your request are likely to be held by another agency or minister, we will liaise with that agency or minister to:

- confirm that they hold, or are likely to hold, the documents
- obtain consent to a full or part transfer.
If the other agency or minister consents to the transfer, we will advise you and transfer the whole or part of your application to the other agency. If the other agency or minister does not consent to the transfer, we will advise you to lodge an application directly with that agency or minister. You may then:

- withdraw your application to the department, in whole or in part; or
- continue with your application to the department resulting in you being issued with a decision that the department does not hold documents relevant to your request or part of your request.

Meeting the statutory requirements for a compliant application

In order for your application to be compliant under the Act, it must:

- be made in the prescribed form, either online or in hard copy
- be accompanied by the application fee (see ‘Fees and charges’ section below)
- give sufficient information concerning the document/s you are seeking to enable the documents to be identified
- state an address to which notices under the RTI Act can be sent
- state whether access to the document/s is sought for the benefit of or use by the applicant or another entity and if it is for the benefit of or use by another entity, the name of that entity.

If your application seeks access to your own personal information, you must provide proof of your identity. If another person is acting on your behalf to make this application, they must provide:

- proof of their identity
- evidence that they have your authority to act on your behalf.

Proof of identity

You may present evidence of identity in person in Brisbane, or provide a certified copy of your identity documentation. Examples of evidence that will be accepted include: current passport, driver licence or birth certificate. The Act requires all copies of documents proving identity to be certified by a lawyer, notary public, a commissioner for declarations or a justice of the peace. Please ensure that you forward the document with the certifying officer’s original signature. A photocopy of the certifying officer’s signature cannot be accepted.

Personal information of another person

If you have requested access to the personal information of another person, you may wish to provide the decision-maker with information that supports your case for giving that information to you. Where the personal information concerns a family member, or there is some other special relationship, it may be helpful to provide evidence of the relationship, for example, a birth certificate where the parents or siblings are named or guardianship or other court order.

Fees and charges

Application fee

An application fee of $49.70 must be paid when you apply for information under the RTI Act. The application fee cannot be waived. An application is not compliant and no action can be taken on it until the fee is paid.

Processing charges

You will be required to pay a processing charge if the department spends more than five hours processing the application. The processing charge is $7.70 for each 15 minutes (or part of 15 minutes) the department spends processing the application and is payable in relation to the whole time spent processing the application (including the first five hours).
You can be charged for:
- searching for or retrieving the document
- making a decision on the application
- doing things related to making a decision on the application.

Please note that there are no processing charges for documents that contain the applicant’s personal information.

You may be eligible for a waiver of processing and access charges – see page 5 for more information.

Access charges
You may be required to pay an access charge for any documents released to you that were in whole or in part. Please note that there are no access charges where access is provided by way of CD. Ordinarily, documents will not be emailed to applicants.

Access charges are the total actual cost of any of the following:
- 25 cents for each A4 black and white photocopied page
- any engagement of another entity to search for and retrieve the document
- any necessary relocation of the document to allow access to be given to the document
- preparing a written transcription of an audio recording
- creating a written document
- giving access to a document (other than as a black and white photocopy).

Charges estimate notice
Before a decision is made, you will be sent a charges estimate notice (CEN) outlining the types of documents located and the estimated costs involved (if any). You will then have 20 business days to:
- confirm the access application (agreeing to pay the charges)
- narrow your application to reduce the charges
- withdraw your application.

If you do not respond within the time, your application will be taken as withdrawn at the end of the 20 business days (or any longer agreed period).

Once you have confirmed a charges estimate notice, the estimated amount set out in that notice is the maximum amount you will be required to pay. If the department spends less time processing your application than estimated, the department will charge you for only the actual time spent. If the department spends more time processing your application than estimated, the department will only charge you the amount set out in the final charges estimate notice.

Final charges notified in decision
A decision will be sent to you that includes the final processing and access charges payable: access will not be provided until all charges are paid.

Please note that you must pay the processing charge even if access to documents is refused or you do not access the documents within the relevant period.
Time limit for access
Your right to access the documents ceases if you don’t access them within the relevant period (40 business days of being notified of the department’s decision). If you need a longer period to access your documents, please contact us to arrange an extension of this time.

Waiver of charges
Application fee
The application fee cannot be waived.

Access and processing charges
Under the RTI Act, process and access charges may be waived in three circumstances where:
• it is uneconomical for the department to impose the charge
• the applicant applies for a waiver and is the holder of a relevant concession card
• the applicant is a non-profit organisation that has been granted financial hardship status from the Information Commissioner.

Uneconomical waiver
Under the RTI Act, the department has the discretion to waive processing or access charges where it is uneconomical for the agency to impose the charge (that is, where the likely associated costs to the department in processing the charge are more than the likely amount of the charge). You will be notified if the department decides to waive your charges on this basis.

How to apply for a waiver (individuals)
Under the RTI Act, you may apply for a waiver of charges and may make this request at any stage of the application. The department must decide to waive those charges if you make a written request to have the processing and/or access charges waived and you show that you are a holder of one of the following current concession cards:
• a health care card or pensioner concession card under the Social Security Act 1991 (Cth)
• a pensioner concession card issued by the department of the Commonwealth in which the Veterans’ Entitlements Act 1986 (Cth) is administered.

Below is a guide to which concession cards are accepted. If you provide a copy note that a copy of both sides is required. If you make a written request to have waived any charges, the department is required to give you a written notice of its decision before the end of the application processing period. A decision by the department not to waive the charges is a reviewable decision. You may apply to have the decision reviewed by the department (internal review) or by the Information Commissioner (external review). See page 10 for more information on review.
How to apply for a waiver (non-government organisations)

Under section 66(2)(b) of the RTI Act, the department must waive any processing charge or access charge for the application if the applicant is a non-profit organisation that has received financial hardship status from the Information Commissioner.

Accordingly, if you have received financial hardship status, please provide the department with a copy of the prescribed written notice, and any processing or access charges will be waived.

Timeframes for notifying an RTI decision

Processing period

The department has 25 business days from the day an application becomes compliant to make a decision on the request (the processing period). However, throughout the application process, the processing period may be extended if one or more of these circumstances arise.

Transfer period

If an application is transferred to another agency or Minister the processing period is extended by the same length as the period starting on the day the application is received by the first agency or Minister and ending on the day the application is transferred to another agency or Minister; or 10 business days, whichever is the lesser.

Extension

If the department asks the applicant for a further period of time to consider the application, the processing period is extended by:

- the further period of time requested by the department if the applicant agrees to the request or does not respond to the request
- the period of time between the date of the department’s request and the date:
- the applicant notifies the department of their refusal of that request
- the date the department receives notice that the applicant has applied for a review under the RTI Act - whichever comes first.

**Charges estimate notice**
If you are given a charges estimate notice the processing period stops and resumes on the date of your final response to the notice.

**Third party consultation**
If under the RTI Act the agency is required to consult with a third party, the processing period is extended by 10 business days.

**Notice of intention to refuse to deal (diversion of resources)**
If a notice of an intention to refuse to deal with the application on the grounds of diversion of resources, there is an additional 10 business day consultation period.

**Third party consultation**
Under the RTI Act, if the department is considering releasing information which, if disclosed, may reasonably be expected to be of concern to a government, agency or person (third party), the department must consult with the third party to obtain their views about whether the:
- relevant documents are documents to which the RTI Act does not apply
- information contained in those documents is exempt information or contrary to public interest information.

The department must consider any relevant considerations raised by the third party in making its decision.

**Deferred access**
If the department decides to give the applicant access to documents and the decision is contrary to the views of a consulted third party, the department must:
- advise the third party of that decision and the third party will have 20 business days after the date on the decision letter to request a review of the decision
- defer access to the applicant until the period of 20 business days has passed or the third party’s avenues of review have been exhausted.

**Disclosure of the applicant’s name**
Please note that where the department is required to consult with a third party, the applicant’s name will ordinarily be given to that third party unless there is a significant reason for withholding it. If you do not want your name to be released to third parties, please advise the department as soon as possible in your access application process. Please note that in some circumstances, who the applicant is may be information that a third party needs in order to form a view about the documents. In those circumstances, if you continue to object to the release of your name to the third party, the department will contact you to discuss the options available to you.

**Decisions**
The RTI Act provides for a range of decisions which may be reached including:
- that the application is outside the scope of the RTI Act
- that the application is not compliant with the statutory requirements
Some of the more notable types of decisions are summarised below.

**Noncompliant application**
This is where an application is noncompliant because all the statutory requirements have not been met (see page 3). The department will contact you to:
- inform you that your application is not compliant
- inform you which requirements you need to meet to make the application compliant
- provide you with a reasonable period of time (usually 10 business days) to make the application compliant.

If the necessary steps are not taken within the time given, a decision that the application is noncompliant will be issued. This means that the department will no longer be able to process the application. In those circumstances, a new application must be made.

**Considered decision**
The most common decision under the RTI Act is a *considered decision* about whether access is to be given to the requested documents and, if so, whether any charge must be paid before access is given.

The department may refuse access to a document to the extent it comprises:
- exempt information
- information the disclosure of which would, on balance, be contrary to the public interest.

Exempt information is set out in Schedule 3 of the RTI Act.

Factors that parliament considers relevant to deciding whether or not disclosure would be in the public interest are set out in Schedule 4 of the RTI Act.

**Refuse to deal**
The department may make a decision refusing to deal with the application if:
- on the face of the application, it appears that all relevant documents are comprised of exempt information (exempt information)
- it considers that the work involved in dealing with the application would substantially and unreasonably divert the resources of the department from their use by the department in the performance of its functions (substantial and unreasonable diversion of resources)
- the applicant has made a previous application for the same documents under either the RTI Act or IP Act and that application was not withdrawn (previous application for same documents).

Ordinarily, we will consult with the applicant before making a decision to refuse to deal.
Non-existent or un-locatable
The department may make a decision refusing access to all or some of the documents where it is satisfied that the documents:
- do not exist
- have been or should be in the department’s possession and all reasonable steps have been taken to find the documents but they cannot be found.

Neither confirm nor deny
Under the RTI Act, an agency is not required to give information about the existence or non-existence of a document containing prescribed information.

Prescribed information means:
- exempt information mentioned in the RTI Act, schedule 3, section 1, 2, 3, 4, 5, 9 or 10; or
- personal information the disclosure of which, on balance, be contrary to the public interest under the RTI Act, section 47(3)(b).

Prescribed information includes, personal information the release of which would be contrary to the public interest, cabinet information, information briefing incoming ministers and law enforcement or public safety information.

Deemed decisions
If the department does not issue the notice of decision by the end of the processing period, a decision refusing access is deemed to have been made. If a decision is deemed to have been made, a notice will be issued and there is a right of external review. There are also cases where your application can be deemed withdrawn when you do not respond to a matter, for example, a charges estimate notice. It is important to respond in the timeframe provided to avoid this. If you need more time to respond, always contact your decision maker to arrange an extension.

Access to your documents
When the decision-maker decides to grant access to some or all of the documents to which you have sought access, you have a choice as to how you access those documents. The department offers access via paper copies (it incurs access charges – see page 4), inspection at a departmental office, CD or email.

Secure email access is provided through the file transfer system Axway. Email access will only be granted when the applicant or their representative contacts us to consent to this form of access. It is important to keep your email account secure once you have consented to using email access to ensure that there is no unauthorised access to your information.

When files are emailed, they are password protected. The password will be provided to you when you contact us to consent to email access. Once the files are emailed to you, an account needs to be created with Axway in order for you to access the documents. The documents are available for seven days after they are emailed and we recommend that you download and save them during this time as you will be unable to do it after this period expires. If you have not had a chance to access the documents before they expire, they can be re-sent to you at a more convenient time within the 40 business day access period.

Disclosure log
A department’s disclosure log makes certain information about applications made under the Right to Information Act 2009 (the RTI Act), and documents disclosed under the RTI Act, available to a wider public audience by publishing the information on the department’s disclosure log pages on the internet.
The RTI Act includes a mandatory requirement to publish certain information and documents on RTI disclosure logs. The new obligations for disclosure logs apply to RTI applications made from 22 February 2013.

The disclosure log is published on the department’s internet site and is in two parts. The first part details valid applications received and will be updated weekly and retained on the webpage for 12 months. The second part publishes documents accessed under an RTI application (other than those documents that contain the personal information* of an RTI applicant). These will be published monthly and will be retained on the webpage for six months.

*Personal information* has the meaning in section 12 of the IP Act:

> Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Information that will not be published to the internet on a Disclosure Log

Information about applications made under the IP Act and documents released that contain the personal information of an RTI applicant will not be published in a disclosure log.

Also, the RTI Act requires that information be deleted from any document or information included in a disclosure log (including an individual's name) if publication:

- is prevented by law
- would be defamatory
- would unreasonably invade a person's privacy
- is confidential communication by a person other than the agency
- is protected under contract
- would cause substantial harm to an entity.

If you believe there may be grounds for deleting information from information or documents proposed to be published on the disclosure log you should inform the department.

Review of decisions

Most decisions under the RTI Act are reviewable. Applications for review must be submitted within 20 business days of the date of the notice of decision. An applicant or third party may submit an internal review application to the department (except in relation to deemed decisions) or make an external review application to the Information Commissioner. Review rights are included in the department’s notice of decision.