



EDO-NQ FACTSHEET SERIES

Right to Information in Queensland

Reviewing a Right to Information Act Decision

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Right to Information in Queensland

Reviewing a Right to Information Act Decision

This factsheet is intended as a plain English guide to a particular area of law. Whilst all care has been taken in its preparation, it is not a substitute for legal advice as legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

1. Reviewing a Right to Information Act decision

If you make a Right to Information (“RTI”) application, you may be given a decision you are not happy with. As we covered in the factsheet “Making a Right to Information Act Application”, the agency may choose to not release documents for a variety of reasons.

If the agency or Minister makes a decision you are not happy with, you can usually have this decision reviewed. The Queensland *Right to Information Act 2009* (“RTI Act”) contains extensive provisions relating to review rights¹.

If you are unhappy with a decision made by an agency or the Minister in response to an RTI application, you may choose to have it reviewed either internally or externally.² An internal review is a reconsideration of the original application by a more senior member of the government agency you first applied to,³ and an external review is conducted by the Information Commissioner.⁴

You may also apply for an external review by the Information Commissioner if you are unhappy with the outcome of an internal review.⁵

2. Which decisions can be internally reviewed?

RTI Act applicants in Queensland are entitled to an internal review of the following decisions (“reviewable decisions”):

1. a decision that an access application is outside the scope of the RTI Act;
2. a decision that the access application does not comply with all relevant application requirements;
3. a decision refusing to deal with an application;

¹ References to legislation in this factsheet are references to the RTI Act unless otherwise stated.

² ss.80 & 85

³ s.80(3)

⁴ s.85

⁵ s.85 and Schedule 6

4. a decision to refuse access to a document;
5. a decision to defer access to a document;
6. a decision about whether a processing charge or access charge is payable, including a decision to not waive charges;
7. a decision giving access to a document in a form different to the form applied for by the applicant, unless access in a form applied for would infringe the copyright of a person other than the State; and
8. a deemed decision.⁶

However, an internal review is not available for the following decisions:

1. a decision made on internal review under Part 8 of the RTI Act;
2. a decision made by the relevant agency's "principal officer" or Minister;
3. a decision made by a healthcare professional relating to a decision made about healthcare; or
4. a decision about the amount of a charge stated in a charges estimate notice.⁷

3. How do I apply for an internal review of a RTI Act decision?

An internal review must be applied for within 20 business days after the date of the written notice of the decision (or some further period allowed by the agency or Minister).⁸

There is no set form to apply for an internal review, but the application must:

1. be in writing;
2. state an address to which notices under the RTI Act may be sent to the applicant; and
3. be lodged at an office of the agency or the Minister.⁹

There is no additional fee for requesting an internal review.

You should keep a copy of your internal review application, as it will be needed if you wish to later seek an external review.

⁶ s.80(1) & Schedule 6

⁷ s.81

⁸ s.82(c)

⁹ s.82

4. Potential outcomes of an internal review application

On an internal review another person within the agency will reconsider the entire matter. The reviewer must decide the application for internal review as if it were a fresh application under section 24 of the RTI Act.¹⁰ For more information on how this application will be decided, see our factsheet “Making a Right to Information Act Application”.

The reviewer must not be the person who made the decision being reviewed, and must be at least as senior as that person¹¹.

There are potentially three outcomes from an internal review:

1. a new decision is made to replace the original decision the subject of the internal review;
2. the original decision is affirmed (i.e. the same decision is made on internal review as the original decision); or
3. no decision is made within 20 business days after the request for internal review is lodged.

If a decision on internal review is made within time (i.e. within 20 business days after the request for internal review was received): the relevant agency or Minister will advise the applicant of the decision in the same way as if it was an original decision;¹²

If no decision on internal review is made within time (i.e. not made within 20 business days after the request for internal review was received): the agency’s principal officer or the Minister is taken to have made a decision affirming the original decision (i.e. the same decision which is subject to the internal review).¹³

If the application for internal review is completely or partly refused the next step is external review. External reviews are conducted by the Information Commissioner.¹⁴ The website of the Information Commissioner contains some useful information about the external review process and can be found at <http://www.oic.qld.gov.au/>.

The Information Commissioner:

1. must conduct external reviews in an informal manner;¹⁵
2. does not have to observe usual rules of evidence (like courts have to);¹⁶
3. has broad discretion to choose the procedure to be followed on a review;¹⁷

¹⁰ s.80(2)

¹¹ s.80(3)

¹² s.83(3)

¹³ s.83(2)

¹⁴ s.85

¹⁵ s.95(1)(b)

¹⁶ s.95(1)(c)

4. must ensure that the review procedure is fair, and that each participant in the review has an opportunity to present their views to the commissioner.¹⁸

Mediation is often used to try and achieve a resolution. Mediation may result in the applicant and the agency agreeing to compromise or the Commissioner may assist by clarifying how the RTI law operates.

5. Which decisions can be externally reviewed?

A RTI Act applicant can apply for external review of a decision if they are unhappy with a decision made by an agency or the Minister in response to an RTI application, or are unhappy with an internal review decision.¹⁹ In practice, the Information Commissioner will likely encourage an applicant to seek internal review before seeking an external review. The Information Commissioner is required to encourage resolution of the dispute before actually conducting an external review.²⁰

You may only apply for external review of decisions for which internal review is available. You cannot use an external review application to review a decision not reviewable internally.²¹

6. How do I apply for an external review of a RTI Act decision?

An application must be made in writing to the Information Commissioner and needs to include:²²

1. the address to which notices are to be sent;
2. details of the decision for review;
3. details of the basis on which the applicant disputes the decision under review;
4. a copy of your original RTI application;
5. a copy of the letter from the agency in response;
6. a copy of your request for internal review; and
7. a copy of the letter from the agency in response to the internal review.

¹⁷ s.95(1)(a)

¹⁸ s.97(2)

¹⁹ s.80(1)

²⁰ s.90(1)

²¹ ss.85 & 86

²² s.88(1). Also see the Office of the Information Commissioner of Queensland website at <http://www.oic.qld.gov.au/application-external-review> for a summary of required information.

There are no costs associated with making an application for external review. However, additional costs incurred by the applicant (such as mailing documents, or making a submission) are payable by the applicant.²³

The application for external review must be made within 20 business days of the date of the written notice of the decision which the applicant is seeking to have reviewed externally.²⁴ This will be either the internal review decision or the original RTI Act decision if application for external review was made before applying for internal review (although that is not recommended). If the agency or Minister do not provide an applicant with an internal review decision, then the timeframe for making the application for external review is 20 business days after the day they would have had to make the decision by.

If possible, you should first make the application through the Information Commissioner's website, at: <http://www.oic.qld.gov.au/application-external-review>. However, an application can also be mailed, in which case it should be sent to:

Office of the Information Commissioner
PO Box 10143
Adelaide Street
BRISBANE QLD 4000

7. Potential outcomes of an external review application

The Information Commissioner will review all the documents provided to them by all parties involved in the review, including the documents being sought. As with an internal review, the Information Commissioner must make one of three written decisions and provide this to the parties involved:

1. affirm the original decision;
2. vary the original decision; or
3. set aside the original decision and substitute a decision in its place.²⁵

External review decisions of the Information Commissioner are final. The merits of the decision cannot be reviewed (i.e. an applicant is not able to ask someone else to 'rehear' the original application and make a new decision on it). The only aspect of these decisions that can be reviewed is whether they were lawfully made (i.e. whether the Information Commissioner made an error in law in arriving at the external review decision).²⁶ Such reviews are conducted in the Supreme Court of Queensland.

You should get legal advice before applying to the Supreme Court of Queensland.

²³ s.112

²⁴ s.88(1)(d)

²⁵ s.110(1)

²⁶ ss.4 & 20: *Judicial Review Act 1991* (Qld)

8. Alternative approaches after a refused review application

Changing the application

If your review applications have been unsuccessful you may consider submitting a new RTI Act application with changes to the scope or nature of the documents that you are seeking. The relevant RTI Coordinator might be able to provide you with advice on doing this.

Other avenues

Lobbying to access the information you are seeking may also prove successful. Local members of parliament, the media and/or community groups may take an interest in the issue. It is also worthwhile to directly lobby the Minister for the information.

9. Further Information

If you have any further questions or concerns about any of these matters, then please contact us on the details below. While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

Stay in contact with your local Environmental Defenders Office.

10. Useful Contacts

EDO-NQ

Level 1, 96-98 Lake Street
CAIRNS QLD 4870
Ph : 07 4031 4766
Fax: 07 4041 4535
edonq@edo.org.au

EDO (Qld)

30 Hardgrave Road,
WEST END QLD 4101
Ph: 07 3211 4466
Fax: 07 3211 4655
edoqld@edo.org.au

To become a member of the Environmental Defender's Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at edonq@edo.org.au or on 07 4031 4766. Our web address is www.edo.org.au/edonq