

Administrative Access – Exempt information and factors for deciding public interest

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Purpose

This guide contains additional information to assist decision-makers to determine what information may be considered exempt information or contrary to public interest, when a decision is required under the Administrative Access Policy on whether to release information that is held by QPT.

It includes a summary of factors favouring disclosure or nondisclosure of information in the public interest, as well as those which are considered to be irrelevant to the decision, as outlined in the [Right to Information Act 2009 \(Qld\)](#) (RTI Act).

This document is intended to be a summary guide only and is not intended to replace legal advice. Further and more detailed information may be found on the Office of the Information Commissioner's (OIC) website (www.oic.qld.gov.au) and within the RTI Act.

Exempt information

Section 48 and Schedule 3 of the RTI Act specifies some types of information that are considered 'exempt information'.

Parliament has considered the disclosure of 'exempt information' to be, on balance, contrary to the public interest. Exempt information must **NOT** be released under QPT's Administrative Access Policy, except in very specific circumstances and with the approval of the CEO.

Below is a summary of the types of information that may be classified as exempt information. This information is provided only to assist QPT employees to understand what may be meant by the term 'exempt information'. For a more detailed explanation, including definitions of specific words or terms used, restrictions that apply and how the legislation relating to exempt information is to be applied, please refer to the RTI Act.

Summary of 'exempt information'

1. Cabinet matter brought into existence before commencement of the RTI Act
Cabinet matter is exempt information if it was created before 1 July 2009, was mentioned in section 36(1) of the repealed *Freedom of Information Act 1992* (Qld) or was not officially published by a decision of Cabinet.
2. Cabinet information created on or after 1 July 2009
Cabinet information (including Cabinet submissions, Cabinet briefing notes, Cabinet agendas, notes of discussions in Cabinet, Cabinet minutes, Cabinet decisions, and any factual or statistical reports attached to these documents) that was created on or after 1 July 2009 is exempt information for 10 years after the date the information was most recently considered by Cabinet (and not officially published by Cabinet) if:
 - it has been created for the consideration of Cabinet; or

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- its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or
 - it has been created during the State's budget processes.
3. Executive Council Information
Information that has been created for submission to Executive Council, or for briefing the Governor, Minister or a chief executive in relation to information submitted to Executive Council is exempt information. This includes information that forms part of an official record of Executive Council, or when disclosing the information would disclose or prejudice the confidence of Executive Council considerations or operations.
 4. Information briefing an incoming Minister
Information is exempt information for 10 years after the appointment of a Minister if the information is created to brief the incoming Minister.
 - 4A. Budgetary information for local governments
Information created during a local government's budgetary process is exempt information for 10 years from the date it is created, except officially published decisions.
 5. Information revealing Sovereign communications
Information is exempt information if its disclosure would reveal any communication between the King or former Queen, and the Governor or Premier.
 6. Information disclosure which would be contempt of court or Parliament
Information is exempt information if its public disclosure would be contempt of court, contrary to an order from a commission or enquiry with power to take evidence under oath or infringe of State or Commonwealth Parliament.
 7. Information subject to legal professional privilege
Information is exempt information if it would be privileged from production in a legal proceeding on a ground of legal professional privilege. For more information, please refer to the OIC's [Exempt information - Legal professional privilege](#).
 8. Information disclosure which would constitute a breach of confidence
Information is exempt information if its disclosure would be the basis of an action for breach of confidence. This includes when information has been provided in confidence on the express or implied understanding that it has been provided for a restricted purpose, or when there's a contractual obligation to maintain confidence. For more information, please refer to the OIC's [Exempt information - Breach of confidence](#), [Basic Guide to Confidentiality](#) and [What is confidentiality? An introduction for applicants and third parties](#).
 9. National or State security information
Information is exempt information if its disclosure could damage the security of the Commonwealth or a State.
 10. Law enforcement or public safety information
Information is exempt information if its disclosure could reasonably be expected to:
 - interfere with or prejudice law enforcement
 - enable the existence or identity of a confidential source of information to be ascertained
 - endanger a person's life or physical safety or result in a person being subjected to harassment or intimidation
 - prejudice a person's fair trial
 - prejudice the effectiveness of a lawful method of preventing, detecting, investigating, or dealing with illegal activities

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- prejudice the protection of public safety or the protection of people, property or the environment,
- endanger the security of a building, structure or vehicle
- facilitate a person's escape from lawful custody
- prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.

11. Investment incentive scheme information

An investment incentive scheme is a scheme to promote projects by providing incentives, such as a tax refund, a benefit, or a lump sum. The projects involve investing or spending money to create job opportunities or continue existing jobs. Information is exempt information if its disclosure could reasonably be expected to disclose information about a particular incentive given to or sought by a relevant person in relation to an investment incentive scheme.

12. Information disclosure prohibited by the RTI Act

Please refer to Schedule 3, section 12(1) of the *RTI Act* for details of information prohibited from disclosure by specific legislation (e.g. *Child Protection Act 1999* (Qld), *Public Health Act 2005* (Qld)).

Factors for deciding the public interest

Sections 47(3)(b) and 49 of the RTI Act together set out the steps for deciding whether disclosing information would, on balance, be contrary to the public interest. This includes identifying which relevant public interest factors mentioned in Schedule 4 might favour disclosure or nondisclosure in the circumstances.

Before deciding on whether information may be administratively released, the decision-maker needs to consider a range of factors, including those specified in Schedule 4 of the RTI Act favouring disclosure or nondisclosure of information in the public interest, and factors that are considered irrelevant to the decision. A summary of these is provided below.

Irrelevant factors

When making a decision regarding the public interest of information, there are several factors that must never influence the decision and must be disregarded. These include when:

- disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government
- disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document
- disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant
- the person who created the document containing the information was or is of high seniority within an agency.

Factors for disclosure of information in the public interest

Broadly speaking, the factors favouring disclosure of information because it is in the public interest relate to information that:

- affects a significant part of the public or community, and not just an individual's private or personal interests
- promotes government accountability, discussion of public affairs, effective oversight of government funds, and protection of the environment.
- promotes open discussion of public affairs and enhances Government's accountability
- contributes to positive and informed debate on important issues or matters of serious interest

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- informs community of Government's operations
- ensures effective oversight of expenditure on public funds
- allows or assist inquiry into possible deficiencies in the conduct or administration of an agency or official
- reveals or substantiates that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct
- is the applicant's personal information
- is a deceased person's personal information and the applicant is an 'eligible family member'
- advances fair treatment of individuals and other entities in accordance with law in dealings with agencies
- reveals the reason for a government decision and any background or contextual information that informed the decision
- reveals that information was incorrect, out of date, misleading, gratuitous unfairly subjective or irrelevant
- contributes to the protection of the environment
- reveals environmental or health risks or measures relating to public health and safety
- contributes to administration of justice generally, including procedural fairness
- contributes to administration of justice for a person
- contributes to enforcement of criminal law
- contributes to innovation and the facilitation of research.

Contrary to public interests

In addition to exempt information described earlier in this document, there are a range of other factors favouring nondisclosure of information because it would be contrary to public interest. These relate to information that:

- prejudices the collective responsibility of Cabinet or the individual responsibility of members to Parliament
- prejudices private, business, professional, commercial or financial affairs of entities
- prejudices protection of an individual's right to privacy
- is not in a child's best interests (if information is the personal information of a child and the applicant in the child's parent)
- is the personal information of a deceased person and the applicant is an eligible family member and disclosing the information could have had an impact on the deceased person's privacy if they were alive
- prejudices the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct
- prejudices security, law enforcement or public safety
- impedes administration of justice generally, including procedural fairness
- impedes administration of justice for a person
- prejudices the security or good order of a corrective services facility
- impedes the protection of the environment
- prejudices the economy of the State
- prejudices the flow of information to police or another law enforcement or regulatory agency
- prejudices intergovernmental relations
- prejudices trade secrets, business affairs or research of an agency or person
- prejudices an agency's ability to obtain confidential information
- prejudices the competitive commercial activities of an agency
- prejudices the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General

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- prejudices the management function of an agency or conduct of industrial relations by the agency
- prejudices the deliberative process of government
- prejudices the effectiveness of testing or auditing procedures
- is prohibited to be disclosed by an Act
- other factors or considerations that may be contrary to public interests.

Public interest harm

The RTI includes ten additional factors that may favour non-disclosure in the public interest, because there may be public interest harm if the information was released. These relate to information that may:

- damage the State's relations with other governments or divulge a government's confidential information
- prejudice an investigation by the Ombudsman or audits by the Auditor-General
- adversely affect particular operations of an agency, such as tests, examinations, audits, relationships with employees or other industrial relations
- disclose deliberations involved in the functions of Government
- disclose information that has been brought into existence for ensuring security or good order of a corrective services facility
- disclose personal information of a person without their consent
- disclose trade secrets or the commercial, business or financial affairs of an agency or person, including research information
- disclose information that was communicated in confidence (except communication by a Minister, a member of staff of or a consultant to a Minister, an officer of an agency, the State or an agency).
- provide an unfair advantage or disadvantage to any individual or group of people, or have a substantial adverse effect on Government's ability to manage the State's economy
- affects the financial or property interests of the State or an agency.