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# **Administrative release of documents on QHRC complaint files policy**

# November 2020

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| Approved |
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| Scott McDougall  Commissioner  5 November 2020 |

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# Introduction

The *Right to Information Act 2009* (the *RTI Act*) commenced on 1 July 2009, replacing the *Freedom of Information Act 1992*. The *RTI Act* applies to the QHRC.

The Preamble to the *RTI Act* provides:

The Government is proposing a new approach to access to information. Government information will be released administratively as a matter of course, unless there is a good reason not to, with applications under this Act being necessary only as a last resort.

The *RTI Act* articulates a pro-disclosure bias in deciding access to documents and provides:

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.

# Objectives

This policy aims to provide parties to complaints made to the QHRC pursuant to the *Anti‑Discrimination Act 1991* (the *ADA*) and the *Human Rights Act 2019* (the HRA) with access to information held on a complaint file; to operate quickly and efficiently; and to increase the QHRC’s openness and accountability in accordance with the *RTI Act*.

# Responsibility

The responsibility for dealing with applications to access documents on QHRC complaint files in the Brisbane office will be with the manager of the relevant Brisbane complaint team, and in the Cairns, Townsville and Rockhampton regional offices with the relevant regional manager.

# Other legislation affecting disclosure

The *Information Privacy Act 2009* states that QHRC must not disclose an individual's personal information without the individual's consent, unless the disclosure of the information is required or authorised by law.

# Scope of policy

Applications under this policy can only be made by complainants and respondents to complaints made to the QHRC under *the Ant- Discrimination Act 1991 or the Human Rights Act 2019* or their authorised representative.

# Making applications

A complainant or respondent can apply for access by writing to the QHRC or by emailing their request for information to [info@qhrc.qld.gov.au](mailto:info@qhrc.qld.gov.au) or to the conciliator for their complaint if the complaint is ongoing.

## Agents

The written consent of a complainant or a respondent will be required before the QHRC will act on a request for a release of documents made by an agent or representative acting on behalf of that complainant or respondent.

## Evidence of identity

Before documents are released pursuant to this policy, the responsible officer must be provided with sufficient evidence of identity to be satisfied that the documents are being released to a person named as the complainant or respondent in a relevant complaint file.

## Time limits

The QHRC will aim to provide a response to a person making application pursuant to this policy within 15 working days of receiving the application.

## Process for determining which documents will be administratively released

The QHRC procedure for determining which documents can be released administratively is:

1. **To parties to an ‘accepted’ complaint under the *ADA or HRA***

Parties are entitled, on request, to all documents on a complaint file except for:

* 1. Legal advices, including communications between an QHRC officer and the QHRC’s Principal Lawyers or external lawyers (legal professional privilege);
  2. Information on the file of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of information of this type (confidential communication);
  3. Notes of the conciliation conference taken by the conciliator are subject to the requirements of both the *Right to Information Act* and the *Information Privacy Act*.  As the parties are involved in a complaint process that involves conflict between individuals, the QHRC will require anyone seeking access to these notes to go through the RTI process, so the QHRC can properly assess the competing considerations favouring disclosure or non-disclosure of the document in question.

**Step 1**

Each document on the relevant complaint file will need to be individually assessed by the responsible officer to determine if it is a document subject to legal professional privilege, or of a confidential nature.

**Step 2**

Documents determined to be of a confidential nature, are only released to the party who holds the confidentiality. Alternatively, confidential information may be deleted from a document where the remainder of the document contains information that is available for administrative release.

**Step 3**

Any copies of documents released to parties to a complaint must be stamped or watermarked with “Administrative Release” before being given to the party requesting the document.

**Step 4**

A list of the documents released to the party, completed and signed in the approved form by the responsible officer must be retained on the complaint file, and details of the application must be entered into the Administrative Release Register by the responsible officer.

1. **To Parties to a complaint not ‘accepted’ under the ADA or HRA**

If the request for a document is made by a complainant, refer to Step 1 above.

If the request for a document is made by a respondent or any other person or entity and the document has not already been released to that person or entity in the course of investigations or preliminary enquiries, the applicant will be required to make a formal application for access under the RTI Act. Refer the applicant to the 'Accessing information' section of the QHRC website.

1. **To Non-parties**

If a person who is not a party to a complaint makes a request for documents on a complaint file, the applicant will be required to make a formal application for access under the RTI Act. Refer the applicant to the 'Accessing information' section of the QHRC website.

## Costs

In most cases, there will be no charge for access to documents, but the QHRC reserves the right to charge for photocopying costs if repeated requests for access are made, or if a single request involves significant cost of copying documents.

## Complaints

If an applicant is not satisfied with the information received or documents released under this policy, they can complain to the QHRC complaint coordinator (Director, Engagement & Corporate Services) via <https://www.qhrc.qld.gov.au/about-us/feedback>, or they may apply for information under *RTI Act* or the *Information Privacy Act.*

# Human rights considerations

When assessing release of documents under this policy, the responsible officer will consider the human rights of the individual complainants and respondents to complaints, including the right to equality before the law, freedom of expression, and the right to privacy and reputation.

# Review

This policy will be reviewed in accordance with the schedule of policy review approved by the Queensland Human Rights Commissioner

Further information and assistance

Employees requiring further information or assistance in relation to this policy should contact their Regional Manager or the Responsible Officer.

Implementation of this policy requires Managers to exercise professional judgement. Managers are encouraged to consult with each other in making these determinations.

Policy administration

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| Policy Name | Administrative release of documents on QHRC complaint files policy |
| File Number | BNE3415381 |
| Responsible Officer | Director, Complaint Management |
| Approving Officer | Commissioner |
| Effective Date | 5 November 2020 |
| Date Approved | 5 November 2020 |
| Next Review | 5 November 2023 |
| Review version approved by | Commissioner |
| Relevant Legislation or Prescription | *Right to Information Act 2009* |
| Network location | S:/Policies/Current/Administrative release of documents on QHRC complaint files |

Version History

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| --- | --- | --- |
| Action | Approved by | Date |
| Created | Commissioner | November 2010 |
| Reviewed | Commissioner | 5 November 2020 |
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Attachment 1

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**Complaint documents released pursuant to Administrative Release**

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| --- | --- | --- | --- | --- |
| **File Ref** |  | | | |
| **Responsible officer** |  | | | |
| **Date of release** |  | | | |
| **Documents released to** |  | | | |
| **List of documents released** |  | | | |
| **Description** | | **Date** | **Full release** | **Partial release** |
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