

Right to Information Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity provide this human rights certificate with respect to the *Right to Information Regulation 2025* (RTI Regulation 2025) made under the *Right to Information Act 2009* (RTI Act).

In my opinion, the RTI Regulation 2025, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The RTI Regulation 2025 remakes the *Right to Information Regulation 2009* (RTI Regulation 2009) to support the effective operation of the *Right to Information Act 2009* (RTI Act), to implement the results of a sunset review of the RTI Regulation 2009 and the *Information Privacy Regulation 2009* and to facilitate amendments to the RTI Act under the *Information Privacy and Other Legislation Amendment Act 2023* (IPOLA Act).

The IPOLA Act received Royal Assent on 4 December 2023.

The IPOLA Act, among other things, amends the RTI Act and the *Information Privacy Act 2009* (IP Act). It implements or responds to recommendations for legislative change to Queensland's information privacy and right to information frameworks from a number of reports including:

- the report on the *Review of the Right to Information Act 2009 and Information Privacy Act 2009*, tabled in the Legislative Assembly on 12 October 2017;
- the Crime and Corruption Commission's report (CCC's report), *Operation Impala, A report on misuse of confidential information in the Queensland public sector*, tabled in the Legislative Assembly on 21 February 2020;
- the CCC's report, *Culture and Corruption Risks in Local Government: Lessons from an investigation into Ipswich City Council*, tabled in the Legislative Assembly on 4 August 2018;
- the *Strategic Review of the Office of the Information Commissioner*, tabled in the Legislative Assembly on 11 May 2017; and
- *Let the sunshine in: Review of culture and accountability in the Queensland public sector*, provided to the former Premier and Minister for the Olympic and Paralympic Games on 28 June 2022.

The RTI Regulation 2025 remakes the RTI Regulation 2009 to:

- include appropriate evidence of identity requirements for individuals applying to access or amend personal information under the RTI Act;

- prescribe the matters to be included in the report of the Information Commissioner under section 184 of the RTI Act, for both the 2025-2026 and 2026-2027 financial years;
- prescribe the matters to be included in the report on the operation of the Act under section 185 of the RTI Act (for both the 2025-2026 and 2026-2027 financial years);
- declare ‘principal offices’ for public authorities under schedule 5 of the RTI Act;
- declare the Bar Association of Queensland as a public authority, under section 16A of the RTI Act, in relation to its public functions under an Act; and
- include transitional provisions to clarify the requirements for annual reports.

The RTI Regulation 2025 commences on 1 July 2025 concurrently with the amendments made to the RTI Act by the IPOLA Act.

The RTI Regulation 2025 continues existing annual reporting requirements for the 2025-2026 financial year, subject to minor drafting changes and changes required as a result of the IPOLA Act (for example, to report on personal and non-personal applications rather than applications under the RTI Act or the Information Privacy Act 2009 (IP Act)).

There will be additional annual reporting requirements for the 2026-2027 financial year and thereafter.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

In my opinion, the rights under the HR Act that are relevant to the RTI Regulation 2025 are:

- property rights under section 24 of the HR Act; and
- privacy and reputation under section 25 of the HR Act.

Consideration of reasonable limitations on human rights (section 13 HR Act)

Fees and charges

Part 3 of the RTI Regulation 2025 prescribes the amounts of fees and charges payable for applications for access to information under chapter 3 of the RTI Act. They set out (by referring to ‘fee units’) amounts payable for making applications, which are application fees (fees to make an application under the RTI Act), processing charges (charges for time agencies or Ministers spend in dealing with an application) and access charges (charges for providing access to documents, for example, by providing copies).

‘Fee units’ were introduced under the Fee Unit Model by Queensland Treasury’s *Principles for Fees and Charges Policy* on 1 July 2021. The fee unit value is prescribed in the *Acts Interpretation Act 1954* and is updated annually to reflect indexation. The use of fee units and consequent annual indexation adjustments affects the property rights of individuals.

These provisions limit the property rights of individuals by requiring payment to exercise a right under the RTI Act.

This limitation is not relevant to all applications. For example, there is no application fee (and no processing charge) for applications that are only for personal information. No fees or charges are payable for amendment applications.

However, the requirement to pay application fees and processing charges, where they apply, does limit the property rights of individuals.

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. The ability to own and protect property historically defines many of the constructs essential to maintaining a free and democratic society based on human dignity, equality and freedom.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure agencies are sufficiently resourced to effectively manage and deliver efficient services to persons seeking government information. Fees and charges also provide a means of deterring or moderating trivial, frivolous, excessively broad or poorly framed applications. Fees and charges are not set with a view to generating revenue or ensuring full cost recovery.

This is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to property will achieve the purpose by setting fees that strike a balance between ensuring that applicants contribute to the cost of providing government-held information while ensuring that their contribution is not so high that it deters people from seeking information.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The RTI Regulation 2025, in prescribing amounts for fees and charges, reflects provisions in the RTI Act requiring the payment of fees and charges by applicants making an access application under chapter 3 of the RTI Act.

This legislative prescription sits within the framework setting out how fees and charges are assessed under the RTI Act. The RTI Regulation 2025 contains some ameliorating effects on the limitation.

For example, a nil processing fee is payable if less than 5 hours are spent processing the application. (For applications requiring more than 5 hours' processing time, the initial 5 hours are charged).

As noted above, there are no application fees and no processing charges for an application that is only for personal information or for an application to amend personal information.

The RTI Act also permits agencies to waive or reduce charges or refund fees in certain circumstances. For example:

- a processing charge or access charge for an access application may be waived if the agency or Minister considers the likely associated costs to the agency or Minister would be more than the likely amount of the charge (section 64 of the RTI Act);
- application fees may be refunded, and processing charges may be reduced or waived where the Information Commissioner allows further time to deal with an access or amendment application (section 93 of the RTI Act); and
- a processing charge, or access charge, for an application may be waived for individuals who are concession card holders or non-profit organisations that the Information Commissioner has decided have financial hardship status (section 66 and 67 of the RTI Act).

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The RTI Regulation 2025 strikes the appropriate balance between ensuring that applicants can make an access application, on the one hand, and, on the other hand, limiting property rights to ensure that applicants contribute to the cost of providing government-held information.

(f) any other relevant factors

The RTI Regulation 2025 replaces the RTI Regulation 2009 that similarly prescribed fees and charges for making applications. There are no changes to the fees and charges.

Evidence of Identity

Section 24 of the RTI Act requires that an application for access to a document containing the applicant's personal information must include evidence of identity for the applicant. Evidence of identity is defined to mean evidence of identity prescribed under a regulation. Section 4(1) of the RTI Regulation 2025 prescribes, for the definition of evidence of identity, that evidence of identity is a document that could reasonably be accepted to be evidence of the person's identity. Section 4(2) then provides that a document that could reasonably be accepted to be evidence of a person's identity may include, for example, one of a number of specified documents.

The provision limits the right to privacy and reputation under section 25 of the HR Act by requiring an applicant to provide a document that verifies the applicant's identity in order to make an access or amendment application.

(a) the nature of the right

Section 25 of the HR Act protects individuals against unlawful or arbitrary interferences with their privacy, and not to have their reputation unlawfully attacked. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. An unlawful or arbitrary interference would be one not permitted by law or that would be capricious, unpredictable or unjust. Further, the right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that information intended for an applicant is only received by an applicant (or their agent, where relevant).

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy will achieve the purpose by prescribing acceptable identity documents that are either largely within a person's direct possession or a document a person could obtain.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The RTI Regulation 2025, in containing legislative prescription for evidence of identity requirements, reflects Schedule 5 of the RTI Act requiring evidence of identity to accompany an access or amendment application for personal information. There are no less restrictive and reasonably available ways to achieve the purpose.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The RTI Regulation 2025 strikes the appropriate balance between ensuring that an applicant is able to make an access application for personal information, or an amendment application on the one hand, and limiting the right to privacy. Although an applicant is required to provide evidence of identity, this is necessary to ensure that an applicant's personal information is only provided to that applicant (or their agent, where relevant).

- (f) any other relevant factors

The RTI Regulation 2025 replaces the RTI Regulation 2009 that also set out which documents were acceptable evidence of identity.

Conclusion

I consider that the RTI Regulation 2025 is compatible with the HR Act because while it does limit, restrict or interfere with human rights, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity