



# Policy – Information Access Requests

## 1.0 Policy Statement

The Mental Health Review Tribunal (**Tribunal**) supports the rights of individuals to have access to personal information held by the Tribunal so far as legislation permits.

It is the Tribunal's position that in relation to documents related to the Tribunal's quasi-judicial functions, some sections of the *Information Privacy Act 2009 (IP Act)*<sup>1</sup> and sections of the *Right to Information Act 2009 (RTI Act)*<sup>2</sup> requiring disclosure and release of documents do not apply. However, section 4 of the IP Act stipulates that nothing in that Act is intended to prevent or discourage the giving of access to documents as is permitted by law and accordingly, the Tribunal has an administrative access scheme in place to provide individuals with access to their personal information.

Where the *Mental Health Act 2016 (MH Act)* prohibits the disclosure of information to a patient this information shall be withheld from them.

## 2.0 Scope

This policy applies to all staff and members of the Tribunal.

## 3.0 Legislation

*Mental Health Act 2016 (Qld)*  
*Information Privacy Act 2009 (Qld)*  
*Right to information Act 2009 (Qld)*  
*Recording of Evidence Act 1962 (Qld)*  
*Human Rights Act 2019 (Qld) (Human Rights Act)*

## 4.0 Associated Documents

1. Procedure – Information Access Requests
2. Guideline – Disclosure Log
3. Guideline – Provision of documents to legal representatives/advocates

## 5.0 Principles

**This policy is based on the following principles:**

- As a public entity, the Tribunal has obligations under the Human Rights Act. Whilst adhering to the legislative framework of the IP Act and the RTI Act the Tribunal will

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<sup>1</sup> Information Privacy Act 2009 (Qld) s 19, sch 2 part 2.

<sup>2</sup> Right to Information Act 2009 (Qld) s 17, sch 2 part 2.



consider the Human Rights Act and more specifically the freedoms of expression<sup>3</sup> and of privacy and reputation<sup>4</sup> in making decisions in respect of information access.

- Information should be disclosed to the public proactively and in response to individual requests unless it is contrary to the public interest.
- Individuals should be provided with access to information in circumstances that it relates to their own personal information or information in the Tribunal's possession or control. This access may be provided under the IP Act, the RTI Act, the MH Act, or through an administrative access scheme.
- A request for information by way of administrative access does not preclude an individual from requesting access through another mechanism available to them.

## 6.0 Policy

It is the intention of the Tribunal to, wherever possible, promote disclosure of information under its control or in its possession. Outlined below are the mechanisms through which information may be released by the Tribunal.

### Release

#### *Administrative Access*

Administrative access to personal information should be provided to a person wherever it is supported by the MH Act including, but not limited to the release of notices of hearings, statements of reasons and clinical reports.

#### *Requests made under the Information Privacy Act 2009 (Qld)*

The IP Act provides for a right of access to a person's own personal information in the government's possession unless, on balance, it is contrary to the public interest to give such access.

Applications may also be made to amend personal information under the IP Act.<sup>5</sup>

#### *Requests made under the Right to Information Act 2009 (Qld)*

The RTI Act provides for a right of access to information in the government's possession or under the government's control unless on balance, it is contrary to the public interest to give the access.

A request made by an individual for information that is in the possession or under the control of the Tribunal and is not their own personal information may be made under the RTI Act.

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<sup>3</sup> Human Rights Act 2019 (Qld), s 21

<sup>4</sup> Human Rights Act 2019 (Qld), s 25

<sup>5</sup> Information Privacy Act 2009, s 44.



### *Mental Health Act 2016 Requests*

Under section 779 of the MH Act, the President of the Tribunal<sup>6</sup> may disclose personal information for a lawful purpose. The MH Act specifies that certain information and documentation must be provided to stated persons. For example, a party to a hearing is entitled to notice of the hearing and notice of the decision.

#### *Research*

The Executive Officer of the Tribunal may disclose relevant information about a patient to a person undertaking research provided the Executive Officer is satisfied that the research is genuine, the President of the Tribunal approves the disclosure and the person gives a written undertaking to preserve the confidentiality of the information.

#### *Other methods of access*

Such a lawful purpose may include a subpoena or other court order. Requests in the form of court orders should be addressed to the President to facilitate this access.

#### Exceptions

Specific types of documents are exempt from disclosure as they either relate to the Tribunal's exercise of its quasi-judicial functions or are expressly prohibited from being disclosed under the MH Act.

#### *Examination Authorities*

The release of information relating to applications for Examination Authorities is assessed as being contrary to public interest because, for example, should information given in confidence be released it would discourage people from applying for Examination Authorities. Therefore, the Tribunal takes the position that information relating to an applicant for an Examination Authority should not be released to persons subject of the application.

The Tribunal is however, required to comply with legislation that may require the disclosure of information for lawful purposes. For example, it is possible for a person the subject of an Examination Authority to request a statement of reasons for the decision to issue such an order. If that action is taken, the Tribunal will take steps to protect the identity of the applicant and/or to maintain the confidentiality of any identifying information.

#### *Victim Impact Statements*

Unless certain circumstances apply, and have been decided upon by the Tribunal, Victim Impact Statements are prohibited from being disclosed to a patient.<sup>7</sup>

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<sup>6</sup> Mental Health Act 2016, s 779

<sup>7</sup> Mental Health Act 2016, s 743.



### *Confidentiality Order*

Information subject to a Confidentiality Order issued by the Mental Health Court or the Tribunal is not to be disclosed to the person subject of a Tribunal hearing through the Information Access Requests Procedure.<sup>8</sup>

### *Documents that arise/exist in relation to exercise of judicial or quasi-judicial functions*

It is the Tribunal's view that as per section 17 and schedule 2, part 2 of the RTI Act, the RTI Act does not apply to the Tribunal in relation to documents that arise from hearings and therefore no obligation to comply with the RTI Act exists in relation to such documents.

The Tribunal also take the view that section 17, section 18(2), section 19 and schedule 2, part 2 of the IP Act operate such that no obligation for the Tribunal to comply with the IP Act exists in relation to documents that arise from hearings.

Documents arising out of or related to the Tribunal's quasi-judicial functions include but are not limited to:

- notices;
- decisions.

### Right of review of decision

When a reviewable decision is made in relation to access under the IP Act or the RTI Act an applicant has a right of review of the decision. Reviewable decisions include but are not limited to:

- a decision that an access application is outside the scope of the IP Act or RTI Act;
- a decision refusing to deal with an application;
- a decision refusing access to all or part of a document;
- a decision to disclose a document contrary to the views of a relevant third party.

A decision made under an administrative access scheme is not a reviewable decision under the IP Act or the RTI Act.

### *Internal Review*

A person affected by a reviewable decision may apply for an internal review of the decision which may be completed by an appropriate officer within the Tribunal.<sup>9</sup>

### *External Review*

A person affected by a reviewable decision may apply for an external review to have the decision reviewed by the Information Commissioner. This application is made to the Information Commissioner.<sup>10</sup>

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<sup>8</sup> Mental Health Act 2016, ss 696, 722

<sup>9</sup> Information Privacy Act 2009, s 94; Right to Information Act 2009, s 80.

<sup>10</sup> Information Privacy Act 2009, s 99; Right to Information Act 2009, s 85.



### Disclosure Log and Information Access Register

A log of access applications made under the RTI Act will be maintained on the Tribunal's website listing details of the application including the outcome, the scope of the application and the date the application was made.<sup>11</sup>

A register of all requests for access to information under the RTI Act, IP Act or an administrative access scheme will be maintained.

### Publication Scheme

The Tribunal acknowledges its obligation under section 21 of the RTI Act to maintain a publication scheme by providing information in respect of its operation and functions to the public via the Tribunal website.

## 7.0 Data Breaches

When a member or staff member of the Tribunal becomes aware of a data breach involving personal information they will, as soon as practicable, inform the Policy and Project Officer who will complete an entry in the data breaches log.

The Policy and Project Officer should also inform the Executive Officer who will determine future actions.

## 8.0 Definitions

**Administrative Access:** A quick and easy process to obtain copies of documents containing an individual's own personal information.

**Data Breach:** When information is accessed without appropriate permission being given or process being followed.

**Patient:** Any person who is receiving or has received care and/or treatment under the *Mental Health Act 2016* and has a file in their name held by the Tribunal.

**Personal Information:** 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.<sup>12</sup>

**Quasi-judicial entity:** an entity that exercises quasi-judicial functions

**Reviewable decision:** a decision made under either the IP Act or the RTI Act in relation to an access application that gives rise to a right of review for an applicant.

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<sup>11</sup> Right to Information Act 2009, s78.

<sup>12</sup> Information Privacy Act 2009, s 12.



## **9.0 Custodian of Procedure**

President, Mental Health Review Tribunal

## **10.0 Review Date**

Date of Procedure: October 2019

Review Date: October 2020