



# Policy – Information Access Requests

## 1.0 Purpose and Policy Statement

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

Documents in relation to the Tribunal's judicial or quasi-judicial functions excluded from the operation of 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. The Tribunal's position is that its judicial or quasi-judicial functions include functions related to the conduct of hearings and the exercise of its jurisdiction under the *Mental Health Act 2016 (MH Act)*.

The Tribunal has an administrative access scheme in place to provide individuals with access to documents (including documents containing their personal information) where they are entitled to access under legislation such as the MH Act. Where the 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 and associated documents

- MH Act
- IP Act
- RTI Act
- *Recording of Evidence Act 1962*
- *Human Rights Act 2019 (Human Rights Act)*
- Tribunal's Procedure – Information Access Requests
- Tribunal's Information Access Pack

## 4.0 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 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.

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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.

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

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



- Information should be disclosed to the public proactively and in response to individual requests where it is lawful to do so and unless it is contrary to the public interest.
- Individuals should be provided with access to information in circumstances that the information relates to their own personal information where that information is 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.

## 5.0 Policy

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

### Release

#### *Administrative Access*

2. Administrative access to personal information should be provided to a person wherever it is lawful to do so, for example, 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*

3. 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.
4. Applications may also be made to amend personal information in the Tribunal's possession or control under the IP Act.<sup>5</sup>

#### *Requests made under the Right to Information Act 2009*

5. The RTI Act provides for a right of access to documents 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.
6. A request made by an individual for documents that are in the possession or under the control of the Tribunal may be made under the RTI Act.

#### *Recording of Evidence Act 1962*

7. The Tribunal is required to ensure appropriate arrangements are in place to ensure the availability of copies of records or copies of transcriptions of records made under the *Recording*

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



of Evidence Act 1962<sup>6</sup>. The MH Act provides clarification on the persons entitled to access records or transcriptions of records<sup>7</sup> (see also Policy – Records of hearings).

#### *Mental Health Act 2016*

8. Under section 778 of the MH Act, members and staff of the Tribunal may disclose personal information to the extent necessary to allow a relevant person to perform functions under the MH Act, if the disclosure is permitted or required by law or if the person to whom the information relates consents.
9. The MH Act also 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*

10. 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*

11. Other lawful mechanisms for disclosure of information or documentation by the Tribunal may include where required by legislation, a court or a tribunal, for example, a subpoena or other court order. Requests in this form should be addressed to the President of the Tribunal.

#### Exceptions

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

#### *Examination Authorities*

13. 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.
14. 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 under the *Judicial Review Act 1991*. 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

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<sup>6</sup> Recording of Evidence Act 1962, s6.

<sup>7</sup> Mental Health Act 2016, s793A.



(see Procedure – Requests for statements of reasons for decisions relating to Examination Authorities).

### *Victim Impact Statements*

15. Unless certain circumstances apply, and a decision has been made by the Tribunal at a hearing, Victim Impact Statements are prohibited from being disclosed to a patient.<sup>8</sup>

### *Confidentiality Order*

16. 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 hearing.<sup>9</sup>

### *Documents in relation to exercise of judicial or quasi-judicial functions*

17. 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 documents held by the Tribunal in relation to the conduct of hearings and decision making within the Tribunal's jurisdiction. Therefore, no obligation to comply with the RTI Act exists in relation to such documents.
18. 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 arises for the Tribunal to comply with the IP Act regarding documents in relation to the conduct of hearings and decision making within the Tribunal's jurisdiction.
19. Documents arising out of or related to the Tribunal's judicial or quasi-judicial functions include but are not limited to:
  - a. notices;
  - b. decisions
  - c. records of proceedings
  - d. hearing schedules
  - e. hearing documentation.

### Right of review of decision

20. 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. a decision that an access application is outside the scope of the IP Act or RTI Act
  - b. a decision refusing to deal with an application
  - c. a decision refusing access to all or part of a document
  - d. a decision to disclose a document contrary to the views of a relevant third party.
21. A decision made other than under the IP Act or the RTI Act, for example, under an administrative access scheme is not a reviewable decision under the IP Act or the RTI Act.

### *Internal Review*

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<sup>8</sup> Mental Health Act 2016, s 743.

<sup>9</sup> Mental Health Act 2016, ss 696, 722



22. 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>10</sup>

#### *External Review*

23. 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>11</sup>

#### Disclosure Log and Information Access Register

24. A log of decisions made by the Tribunal to give access to a document under an access application 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>12</sup>
25. An internal register of all requests for access to information under the RTI Act, IP Act or an administrative access scheme will be maintained.

#### Publication Scheme

26. 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.

#### Data breaches

27. 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 Executive Officer who will follow the Tribunal's legislation breach notification procedure.

## **6.0 Definitions**

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

*Patient:* Any person who is receiving or has received care and/or treatment under the MH Act 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>13</sup>

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<sup>10</sup> Information Privacy Act 2009, s 94; Right to Information Act 2009, s 80.

<sup>11</sup> Information Privacy Act 2009, s 99; Right to Information Act 2009, s 85.

<sup>12</sup> Right to Information Act 2009, s78.

<sup>13</sup> Information Privacy Act 2009, s 12.



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

## **7.0 Custodian of Procedure**

Senior Principal Lawyer

## **8.0 Review Date**

Date of Policy: July 2024  
Next Review Date: July 2025