



Decision-makers' manual for decisions made under the *Information Privacy Act 2009*

November 2017

Please note that this manual should be regarded as a guide only. Officers dealing with applications should be familiar with the contents of the legislation and ensure that their actions accord with that legislation.

IP DECISION-MAKERS' MANUAL

Contents

INTRODUCTION.....	1
RTI OR IP?.....	2
IP Act – general points	2
RTI Act – general points	2
HOW LONG YOU HAVE – THE PROCESSING PERIOD	3
Periods that do not count as part of the processing period	3
STEP ONE – PRELIMINARY ASSESSMENT.....	4
Step 1.1 – Assess whether the application requests documents that are outside the scope of the IP Act	5
Step 1.2 – Assess whether the application fails to comply with relevant requirements	6
Step 1.3 – Assess whether the application has been made under the wrong Act	7
Step 1.4 – Assess whether the application has been made under the wrong Act.....	9
Substantial and unreasonable effect on functions.....	9
Previous application for the same documents.....	10
Step 1.5 – Assess whether you should transfer the application	11
Step 1.6 – Assess whether it is apparent from the application that the applicant will accept redacted copies of documents	11
Applications by or for children.....	11
STEP TWO – SEARCH REQUESTS	13
STEP THREE – CONSIDER DECISION	15
Step 3.1 – Assess whether the documents are within the scope of the application	16
Step 3.2 – Assess whether you need to ‘neither confirm nor deny’ the existence of some of the documents.....	16
Step 3.3 – Assess whether you need to consult with third parties.....	17
Step 3.4 – Assess whether you need to brief the Director-General or Minister	18
STEP FOUR – ASSESSING WHETHER THERE ARE GROUNDS TO REFUSE ACCESS	20
Step 4.1 – Assess whether the documents contain exempt information	21
Step 4.2 – Assess whether the documents contain contrary to public interest information.....	21
The first step.....	21
The second step.....	22
The third step	23
The fourth step	23
The fifth step	23
Practical example for considering the public interest	23

Step 4.3 – Assess whether disclosure of the documents would not be in a child’s best interests.....	26
Step 4.4 – Assess whether disclosure of the documents might be prejudicial to the health of the applicant.....	27
Step 4.5 – Assess whether the documents are nonexistent or unlocatable	28
Step 4.6 – Assess whether access to the documents is available another way	28
Step 4.7 – Key concepts for deciding whether or not to refuse access.....	29
Could reasonably be expected	29
Distinguishing the word ‘could’ from the phrase ‘could reasonably be expected’	30
Prejudice to future supply of information.....	30
Trade secrets, information that has commercial value, and information concerning business, professional, commercial or financial affairs	31
Breach of confidence	32
Commercial in confidence	34
Deliberative process	35
Legal professional privilege	36
Notifications of child harm under the <i>Child Protection Act 1999</i>	38
Cabinet information	41
Parliamentary privilege.....	43
STEP FIVE – FINAL DECISION	44
Access charges.....	45
STEP SIX – FINAL DECISION NOTICE	46
Notification of final decision and reasons	46
List of documents you have considered.....	46
Neither confirm nor deny	46
STEP SEVEN – GIVING ACCESS.....	49
AMENDMENT APPLICATIONS.....	51
How long you have – the processing period.....	51
Step one – Preliminary assessment	51
Step 1.1 – Assess whether the document that the amendment application relates to is outside the scope of the IP Act	51
Step 1.2 – Assess whether the amendment application fails to comply with relevant requirements.....	52
Step 1.3 – Assess whether you should refuse to deal with the amendment application	53
Step 1.4 – Assess whether you should transfer the amendment application	53
Step two – Final decision on amendment application	54
Granting or refusing the application	54
Forms of amendment	55
Step three – Notification of final decision on amendment application and reasons	55
Further request for notation.....	55

Further dealings with information	56
REVIEWS AND APPEALS	57
Reviews	57
Internal review	58
External review	58
Participants in external review	58
Information Commissioner may decide not to deal with application	59
Preliminary inquiries	60
Settlement and informal resolution	60
Role and responsibilities of participants in external review.....	60
Powers and obligations of Commissioner to maintain confidentiality	61
Result of external review.....	62
References, appeals and reviews	63