

# Queensland Government Enterprise Architecture Guideline



## Determining the ex ante release status of information

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Feedback was also received from a number of staff from various agencies, which was greatly appreciated.

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## Information security

This document has been security classified using the Queensland Government Information Security Classification Framework (QGISCF) as PUBLIC and will be managed according to the requirements of the QGISCF.

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# 1 Introduction

## 1.1 Purpose

This guideline specifies best practices and suggested rules for determining the *ex ante* release status of information.

## 1.2 Audience

This document is primarily intended for:

- creators of information
- custodians of information assets
- information release specialists/decision makers
- policy officers
- information champions
- information governance bodies.

## 1.3 Scope

This guideline supports *Information Standard 33: Information access and use* and as such applies to all departments and public authorities as defined by the *Right to Information Act 2009 (Qld)* and subsequent regulation.

Personal information<sup>1</sup> is outside of the scope of this guideline.

# 2 Background

## 2.1 What does the term *ex ante* mean?

The term *ex ante* is a neo-Latin word meaning 'before the event.' Here the event is the release of information. In this context the *ex ante* decision-making rules are a series of considerations to be taken into account when assessing whether information is suitable for release administratively (see section 2.3 for more detail on administrative release).

## 2.2 Why were the *ex ante* decision-making rules developed?

The *ex ante* decision-making rules (see Appendix A) were developed in response to Recommendation 5 of the FOI Independent Review Panel's [The Right to Information: Reviewing Queensland's Freedom of Information Act](#).

*Ex ante decision-making rules...should be introduced as a strategy in routine and proactive disclosure where documents that can be released without difficulty and those that might need specific consideration are identified [by those who understand the documents best] at the outset...*

The Queensland Government in its response supported this recommendation stating:

*To give effect to this recommendation, the government will develop an ex ante decision-making*

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<sup>1</sup> For the purpose of this guideline 'personal information' is information the release of which would be a breach of the *Information Privacy Act 2009*.

standard as part of the development of the whole-of-government information policy. This work, led by QGCIO, will establish decision-making rules for the release of information...<sup>2</sup>

## 2.3 What is the purpose of the *ex ante* decision-making rules?

The new Right to Information (RTI) environment seeks to achieve open, accountable and participatory government by shifting to a 'push' model for the release of information. The intention is to position formal legislative access requests for Queensland Government information (i.e. the 'pull' model) as the last resort.

Departments are required to 'maximise the public's access to government information by administratively releasing information where ever possible.'<sup>3</sup> This is a policy obligation as stated in the [Statement of Right to Information Principles for the Queensland Public Service](#) and [Information Standard 33: Information access and use](#).<sup>4</sup> The *ex ante* decision-making rules are an important part of assessing whether information is suitable for administrative release. **The rules do not of themselves determine whether information is suitable for publication or inclusion in a publication scheme.** Further considerations apply when determining whether information is suitable for publication or inclusion in a publication scheme (e.g. significance) (see *Figure 1*). As outlined in the [Office of the Information Commissioner Guideline: Administrative release of information](#), there are three main types of administrative release:

- administrative access schemes
- access under specific legislation
- administrative access other than under a scheme.

**The *ex ante* decision-making rules are a series of considerations to be taken into account when assessing whether information is suitable for release administratively other than under a scheme.** Other considerations apply for administrative access schemes and access under specific legislation; see the [Office of the Information Commissioner Guideline: Administrative release of information](#).

The *ex ante* decision-making rules are intended to support positioning formal legislative applications for access to information (i.e. *Right to Information Act 2009* (Qld) applications) as the last resort, by assisting those who understand the information in question best (e.g. creators and custodians) to make an initial decision as to whether it can be released without difficulty or if further consideration is required.

## 3 Operation of the *ex ante* decision-making rules

*Figure 1* provides an overview of the operation of the *ex ante* decision-making rules in the Right to Information environment. The figure includes references to sections of this guideline that provide guidance for different aspects of the operation of the rules.

<sup>2</sup> Queensland Government, *The right to information: A response to the review of Queensland's Freedom of Information Act*, available at [http://www.thepremier.qld.gov.au/library/pdf/initiatives/foi\\_review/Right\\_to\\_Information.pdf](http://www.thepremier.qld.gov.au/library/pdf/initiatives/foi_review/Right_to_Information.pdf), accessed 23 October 2009.

<sup>3</sup> Queensland Government, *Statement of Right to Information Principles*, available at <http://www.rti.qld.gov.au/downloads/Right%20to%20Information%20Principles.pdf>, accessed 21 October 2009.

<sup>4</sup> Although this is a policy obligation, some administrative release arrangements have statutory authority. See further the Office of the Information Commissioner's [Administrative release of information guideline](#).

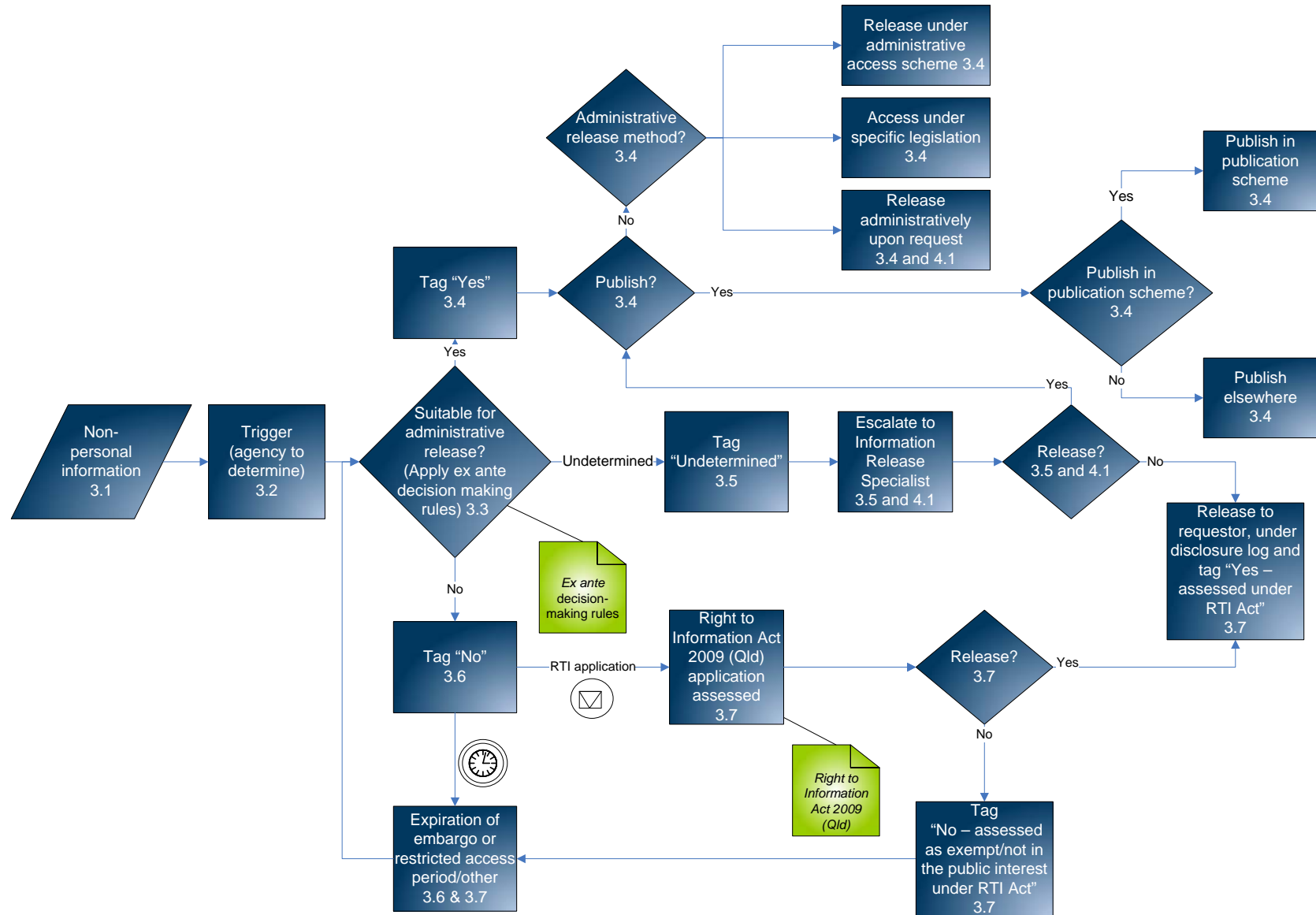


Figure 1 Overview of the operation of *ex ante* decision-making in the Right to Information environment

### 3.1 What are the *ex ante* decision-making rules applied to?

The *ex ante* decision-making rules apply to all Queensland Government non-personal information.<sup>5</sup>

### 3.2 When are the *ex ante* decision-making rules applied?

As illustrated in *Figure 1* departments are to determine what is an appropriate trigger for the application of the *ex ante* decision-making rules in their context. Examples of triggers include:

- a request for the information
- creating a record for the information in a document and records management system or eDRMS
- finalisation/approval of the information
- revision of content
- revision and assignment of a new security classification.

What is an appropriate trigger may vary based on the content type<sup>6</sup> or format of the information. For example:

- in the case of information stored in transactional database systems and never 'finalised', the information is available for consideration for release if it is in operational use. Such information sources should therefore be considered against the *ex ante* decision-making rules when they are first placed into operational use.
- an email may be considered under the *ex ante* decision-making rules when it is determined that it is a public record.

### 3.3 Applying the *ex ante* decision-making rules

#### 3.3.1 *Ex ante* release status categories

As illustrated in *Figure 1* the *ex ante* decision-making rules will sort information into three initial release status categories:

- Yes – may be released
- Undetermined – requires further consideration
- No – may not be released at this point in time.

The table in *Appendix A* lists each of the rules and their outcomes. Departments may find it useful to adapt this format to record the release status decision for information.

#### 3.3.2 How are the *ex ante* decision-making rules applied?

The rules operate as follows, if the application of:

- at least one rule results in a 'No' tag, the information will be tagged 'No'
- at least one rule results in an 'Undetermined' tag and there are no 'No' tags, the information will be tagged 'Undetermined' and referred to the department's information release specialists in accordance with departmental procedures for further consideration
- all rules have been applied and there are no 'No' or 'Undetermined' tags, the information will be tagged 'Yes'.

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<sup>5</sup> See footnote 1.

<sup>6</sup> See further the [QGEA Definition Paper: Information Architecture](#).

### 3.3.3 Where is the *ex ante* release status recorded?

Departments will need to implement or adapt existing methods for recording the *ex ante* release status of information (e.g. an information asset register, a document property field, or a field within document and records management system or eDRMS). It is important that the *ex ante* release status is recorded so that the *ex ante* release status determination is not repeated, unless required.

### 3.4 Information identified as ‘Yes – may be released’

The next question to ask for information identified as ‘Yes – may be released’ is, ‘should it be published?’ In making this determination, departments should refer to their own publishing policies and procedures. Here there are two possible outcomes:

- Yes - If it is deemed suitable for publication it should be determined whether it is appropriate for publishing within the department’s publication scheme. Implementation of publication schemes is a *legislative obligation* under the *Right to Information Act 2009*. The following documents provide guidance to departments when determining what information is suitable for inclusion in a publication scheme:
  - [Ministerial Guidelines for operation of publication schemes and disclosure logs](#)
  - [Office of the Information Commissioner Guideline: Proactive disclosure and publication schemes](#).

The Office of the Information Commissioner’s guideline also provides guidance on approval (i.e. accountability and authorising) processes for publication schemes.

If the information is not suitable for publishing within the publication scheme, then it should be published elsewhere in accordance with a department’s publishing policies and procedures.

- No - If it is determined that the information is not suitable for publication, then the next question to ask is ‘how should the information be released administratively?’ As discussed in 2.3 there are three main types of administrative release:
  - administrative access schemes
  - access under specific legislation
  - administrative access other than under a scheme (see section 4.1 for authorising and accountability considerations here).

This guideline is concerned with the latter (administrative access other than under a scheme). However, departments should consider whether the information may be released under an existing administrative access scheme or under specific legislation or if development of a new scheme is appropriate. In making such a determination, departments should refer to their own administrative access policy and arrangements, and the [Office of the Information Commissioner Guideline: Administrative release of information](#).

### 3.5 Information identified as ‘Undetermined – requires further consideration’

Information that has a release status of ‘Undetermined’ will need to be escalated to the department’s information release specialists for further consideration. See also section 4.1 for authorising and accountability considerations at this point. There are two possible outcomes after consideration by an information release specialist:

- Yes - If it is determined that the information could be released it should be tagged ‘Yes’ and follow the process outlined in 3.4.
- No – If it is determine that the information is not suitable for release, it should be tagged ‘No’ and follow the process outlined in 3.6.

### 3.6 Information identified as 'No – may not be released at this point in time'

Information that has a release status of 'No' is not to be released. However, this determination is subject to further rules (e.g. a restricted access period may expire resulting in information tagged 'No' being reassessed and subsequently tagged otherwise) (see *Figure 1*).

Information identified as 'No' initially, will continue to be subject to legislative access applications (see *Figure 1* and section 3.7).

### 3.7 Information released under the *Right to Information Act 2009* (Qld)

Information that is released under a formal *Right to Information Act 2009* (Qld) application should, where appropriate, subsequently be published to the department's disclosure log. The following documents provide guidance to departments on the operation of disclosure logs:

- [Ministerial Guidelines for operation of publication schemes and disclosure logs](#)
- [Office of the Information Commissioner Guideline: Disclosure logs.](#)

Information subject to a formal application under the *Right to Information Act 2009* should be subsequently tagged either:

- Yes – assessed under Right to Information legislation
- No – assessed as exempt or release is not in the public interest under Right to Information legislation (see *Figure 1*).

Information tagged 'No – assessed under Right to Information legislation' could also be reassessed and subsequently tagged otherwise. For example, cabinet information is exempt for a period of 10 years. After expiration of this period, it may be reassessed and tagged as 'Yes' or 'No'.

In the case where information is tagged 'No' and this status applies for only a defined period of time, information about when its status is due for review, or when it can be released should also be recorded.

## 4 Implementation considerations

### 4.1 Authorising and accountability environment for the release of information

The [QGEA Information position](#) requires departments to establish an authorising and accountability environment for the routine and proactive disclosure of information. In the context of determining the *ex ante* release status of information, departments should implement:

- policies
- clear decision-making and business processes
- procedures
- roles and responsibilities
- supporting tools and systems
- appropriate governance.

Aspects of *ex ante* decision-making that require particular attention are:

- Who applies the *ex ante* decision-making rules – departments will need to determine who will make an initial assessment of whether information should be tagged ‘Yes’, ‘No’ or ‘Undetermined.’
- Triggers – clear policies and procedures on what a department determines is a trigger for considering whether information is suitable for administrative release are required
- Escalation to information release specialists – this includes establishing the roles and responsibilities of information release specialists and processes for escalating information tagged ‘Undetermined’ to information release specialists for further consideration
- Release administratively upon request – this includes identifying who (usually a Chief Executive Officer, information champion, or other senior officer) has the authority to actually sign off on the release or publication of information identified as ‘Yes’ for release

It is critical that the department’s authorising and accountability environment is communicated to and understood by *all staff*.

Further implementation considerations and guidance is available in the following documents:

- [QGEA Information policy](#)
- [QGEA Information position](#)
- [Information Standard 33: Information Access and Use](#)
- [QGEA Guideline: Implementing information governance](#)
- [Office of the Information Commissioner Guideline: Proactive disclosure and publication schemes](#)
- [Office of the Information Commissioner Guideline: Administrative release of information.](#)

### 4.2 Modification of the *ex ante* decision-making rules

Departments will need to consider what modifications or additional *ex ante* decision-making rules are required in their specific context.

### 4.3 Relationship between *ex ante* decision-making and the Government Information Licensing Framework

The following table summarises the relationship between *ex ante* decision-making the Government Information Licensing Framework (GILF) in certain scenarios.

Scenario	Potential outcomes
Information has: <ul style="list-style-type: none"> <li>• a GILF licence</li> <li>• not been assessed under the <i>ex ante</i> decision-making rules.</li> </ul>	<ul style="list-style-type: none"> <li>• Information with any of the six Creative Commons GILF licences (i.e. not a Restrictive Licence) should be tagged 'Yes' for release.</li> <li>• Information with a GILF Restrictive Licence would require further consideration and should be tagged 'Undetermined.'</li> </ul>
Information has: <ul style="list-style-type: none"> <li>• no GILF licence</li> </ul>	<ul style="list-style-type: none"> <li>• If the information has not been assessed under the <i>ex ante</i> decision making rules, it should now go through this process.</li> <li>• Information identified as 'Yes' suitable for release and publication must go through the GILF licensing review process to assign one of the six Creative Commons licences (i.e. not a Restrictive Licence).</li> <li>• Information identified as 'Yes' suitable for release but not publication should go through the GILF licensing review process only if deemed appropriate.</li> <li>• If the information has been requested, information tagged 'Undetermined' or 'No' should go through the GILF licensing review process to consider whether it may be released under a Restrictive Licence.</li> </ul>

Further information about GILF is available at <http://www.gilf.gov.au/>.

## 4.4 Relationship between *ex ante* decision-making and the Queensland Government Information Security Classification Framework

The following table summarises the relationship between *ex ante* decision-making and the [Queensland Government Information Security Classification Framework](#) (QGISCF) in certain scenarios.

Scenario	Potential outcomes
Information has: <ul style="list-style-type: none"> <li>not been assessed under the QGISCF</li> <li>been considered for release under the <i>ex ante</i> decision-making rules</li> </ul>	<ul style="list-style-type: none"> <li>Information is tagged 'Yes' for release and is to be published should be classified as PUBLIC.</li> <li>Information is tagged 'Yes' for release and is not to be published should be classified as UNCLASSIFIED.</li> <li>In all other cases (i.e 'Undetermined' and 'No') a security classification should be determined in accordance with the QGISCF.</li> </ul>
Information has: <ul style="list-style-type: none"> <li>not been considered for release under the <i>ex ante</i> decision-making rules.</li> </ul>	<ul style="list-style-type: none"> <li>If the information does not have a QGISCF security classification, it should be assessed in the first instance under the QGISCF.</li> <li>Information classified as PUBLIC should be published (i.e. tagged 'Yes').</li> <li>Information that is UNCLASSIFIED requires consideration under the <i>ex ante</i> decision-making rules (i.e. could be tagged either 'Yes', 'Undetermined' or 'No').</li> <li>Information that is classified as X-IN-CONFIDENCE or above, or is national security information should not be released (i.e. tagged 'No'). Note: that this information will continue to be subject to legislative access applications under the <i>Right to Information Act 2009 (Qld)</i>.</li> </ul>

## 4.5 Contributing to this guideline

Departments are encouraged to submit any policies, procedures or specific rules they have established for determining the *ex ante* release status of information to [ggcio@qld.gov.au](mailto:ggcio@qld.gov.au). These will be considered for inclusion in this guideline.

## Appendix A Ex ante decision-making rules

Rule	Yes	No	Undetermined
<p>Release of the information is in the public interest and may result in any of the following:</p> <ul style="list-style-type: none"> <li>• promote open discussion of public affairs and enhance the Government's accountability</li> <li>• contribute to positive and informed debate on important issues or matters of serious interest</li> <li>• inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community</li> <li>• ensure effective oversight of expenditure of public funds</li> <li>• allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official</li> <li>• reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct</li> <li>• advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies</li> <li>• reveal the reason for a government decision and any background or contextual information that informed the decision</li> <li>• reveal that the information was either incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant</li> <li>• contribute to the protection of the environment</li> <li>• reveal environmental/health risks or measures relating to public health and safety</li> <li>• contribute to the maintenance of peace and order</li> <li>• contribute to the administration of justice generally, including procedural fairness</li> <li>• contribute to the administration of justice for a person</li> <li>• contribute to the enforcement of the criminal law</li> <li>• contribute to innovation and the facilitation of research.</li> </ul>	✓		
<p>The information is required to be published/released or has previously been published/released.</p>	✓		
<p>There is an alternative access mechanism available for the information. (Note: this does not preclude an agency from being able to charge for such information).</p>	✓		
<p>The information is classified as PUBLIC under the Queensland Government Information Security Classification Framework.</p>	✓		

Rule	Yes	No	Undetermined
Any of the following applies to the information: <ul style="list-style-type: none"> <li>• out of copyright</li> <li>• available under any Government Information Licensing Framework licence other than a Restrictive licence.</li> </ul>	✓		
The information is tagged as 'May be released under FOI' or 'May be published' in the 'Record access' element qualifier, 'Access rights'.	✓		
The information has previously been assessed by an authorised officer as exempt or not in the public interest to release. Note: this information should be tagged 'No –assessed under RTI legislation'.		✓	
There is clearly the possibility of harm being occasioned by release of the information. That is, release of the information could reasonably be expected to result in any of the following: <ul style="list-style-type: none"> <li>• prejudice the collective responsibility of Cabinet or the individual responsibility of members of Parliament</li> <li>• prejudice the private, business, professional, commercial or financial affairs of individuals or entities</li> <li>• prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct</li> <li>• prejudice security, law enforcement or public safety</li> <li>• impede the administration of justice generally, including procedural fairness</li> <li>• impede the administration of justice for an individual</li> <li>• prejudice the security or good order of a corrective services facility</li> <li>• impede the protection of the environment</li> <li>• prejudice the economy of the State</li> <li>• prejudice the flow of information to the police or another law enforcement or regulatory agency</li> <li>• prejudice intergovernmental relations</li> <li>• prejudice trade secrets, business affairs or research of an agency or person</li> <li>• prejudice an agency's ability to obtain confidential information</li> <li>• prejudice the competitive commercial activities of an agency</li> <li>• prejudice the financial or property interests of State or agency</li> <li>• prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general</li> <li>• prejudice the management function of an agency or the conduct of industrial relations by an agency</li> <li>• prejudice a deliberative process of government</li> <li>• prejudice the effectiveness of testing or auditing procedures.</li> </ul>		✓	
Disclosure of the information is prohibited by an Act.		✓	

Rule	Yes	No	Undetermined
The information is either a Cabinet matter or Cabinet information, unless it is published by decision of Cabinet.		✓	
The information is Executive Council information.		✓	
The information is briefing an incoming Minister.		✓	
The information reveals communications between the Sovereign and the Sovereign's representative.		✓	
The information reveals communications between the Sovereign or the Sovereign's representative and the Premier.		✓	
Release of the information would be contempt of court (including a royal commission, commission of inquiry or other having power to take evidence on oath) or Parliament.		✓	
The information is subject to legal professional privilege.		✓	
Release of the information would found an action for breach of confidence.		✓	
The information is national or state security information.		✓	
Release of the information may prejudice law enforcement or public safety.		✓	
The information is investment incentive scheme information.		✓	
The information is tagged with any of the following under the Queensland Recordkeeping Metadata Standard's Access Rights Scheme: <ul style="list-style-type: none"> <li>• 'Not for release'</li> <li>• 'Limited release'</li> <li>• 'Open after &lt;x&gt; years'</li> <li>• 'Embargoed'.</li> </ul>		✓	
There may be risk of damage to the information if it is released or made available for viewing.		✓	
The information contains intellectual property under development.		✓	
The information is classified as X-IN-CONFIDENCE or above under the Queensland Government Information Security Classification Framework		✓	
The information is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.			✓

Rule	Yes	No	Undetermined
Any of the following applies to the information: <ul style="list-style-type: none"><li>restricted copyright licence (commercial)</li><li>Government Information Licensing Framework Restrictive Licence</li><li>copyright is not owned by the Crown.</li></ul>			✓
The information is in draft form.			✓