



DAY 1 = Session 1

RTI Officers Training Sessions

08 May 2019

Welcome!



Facilitators



Harold Obed

RTI Unit Manager



June Naviti

Records Management Officer



Kevin Henry

RTI Publication Officer

Tell us who you are”

*Around
the
table*

Your agency

**Your
position?**

15 MIN. WAKE UP EXERCISE!

What is the Right to Information?	What steps has your Agency taken to prepare for RTI Implementation?	In what way(s) do you think RTI will benefit your community?
1.	1.	1.
2.	2.	2.
3.	3.	3.
4.	4.	4.
5.	5.	5.
6.	6.	6.
7.	7.	7.
8.	8.	8.

OBJECTIVES OF RTI LAWS

A TOOL:

- * **To push back against corruption**
- * **To facilitate more effective governance**
- * **To ensure fairness and equality:** In the administration of policies such as education, health, procurement, land etc
- * **To build increased trust and confidence:** In government, our leaders and their abilities to help us improve our lives

In this session:

The basic objective: good governance

Good governance will be achieved only when the public authority is-

- Corruption free
- Accountable
- Transparent
- Responsive
- Equitable and Inclusive
- Effective & efficient
- Follows the rule of law
- Participatory
- Consensus oriented



By virtue of the RTI Act, citizens can put their eye on above noted essentials of good governance.

RTI In Action

CHILDREN RIGHTS

Jamaica – **Jamaicans for Justice** and other civil society groups in Jamaica were able to collect **information on conditions in children's homes** and produce a report. The findings of the report clearly illustrated the **poor conditions and mistreatment of children**, and made government face the problems and **take necessary steps such as establishing a Commission and law reform**

UNEQUAL PAY

UK- In 2006, an FOI request revealed that the BBC was **violating the Equal Pay Act** by having different salaries for men and women for **similar work**. The disclosure forced the **government to issue recommendations**, and the **BBC itself announced a plan to review its salary policy**.

UNNECESSARY GOV'T EXPENSES

UK - Scandal about MP's expenses which broke when the Daily Telegraph published documents showing unnecessary expenses. Scandal was continued when the **High Court ordered the disclosure of MP's expenses** which resulted in several **resignations**. Also decided to set up an independent Parliamentary Authority to supervise such matters going forward

HOUSING BENEFITS

India - With help of FOI, a man who had been awaiting housing benefits for 5 years from the government received money for the house under the scheme and 1st instalment only after requesting information on project implementation

RTI In Action

REDUCTION IN BRIBES

India – In a widespread practice, **officials delayed** the **issuance of** certain documents such as **driving licenses and passports** in order to receive a **bribe**. After the adoption of the RTI Act, people started using it to find out the reasons for the delay instead of giving out the bribes. **The requests revealed the practice** and resulted in the issuance of the documents

ENVIRONMENTAL PROTECTION

Jamaica – Challenge to EIAs supporting oil exploration in Cockpit Country
Exposure of dumping of raw sewage in waters around coastal hotels

EDUCATION EQUALITY

Thailand - Mothers of school children who had been denied entrance to a state elementary school used the country's RTI law to get access to the test scores of the children who were admitted, with names omitted for privacy. The scores revealed that more than a third of the children admitted had failed the entrance exam while students who had passed were denied admittance. d.



Background to RTI

- It was an initiative of the Commonwealth in 2005 to promote and for implementation.
- UNDP through MAV first circulated its discussion paper in 2007.
- TIV drew up the first FOI Draft law which was dismissed by Civil society Groups.
- **The National RTI Policy 2014**
- The Vanuatu Right To Information Bill was tabled in the Parliament on 6th November 2016 and unanimously passed.
- The RTI Law was gazetted by the State Law Office in February 2017.

Implementation Planning Structure



Prime Minister

RTI Commissioner

DSPPAC

**RTI Steering Committee
(RTISC)**

RTI Unit

All authorities represented
| Ministries & dept.
& statutory bodies

IT

**Implementation
Planning**

**Training &
RTI & Records
Management**

**Public
Participation &
Communications**

OBJECTIVES OF RTI LAWS

Push back:

- * *Old presumption* - that governments operate in secrecy

* **Represents:**

- * *New presumption* - All government information is open,
unless it should be protected

RTI Vision

**THE RIGHT
TO KNOW**
**KEEPING GOV'T
ACCOUNTABLE**



Then Acting PM signing the first RTI Ministerial Order

*Commitment
pledge for
Good
Governance*

* VISION

* To provide open, accountable and participatory government for all the people of Vanuatu.

*

A change to our mind-set



*What was normally
perceived as confidential
information, may not be
confidential after all*

OBJECTIVES OF RTI LAWS

What it isn't

- * It is NOT US AGAINST THEM
- * It is NOT TO SOLELY CAUSE SCANDAL for political leaders
- * It is NOT ONLY FOR THE MEDIA

OBJECTIVES OF RTI LAWS

For the Public/Ordinary People:

To know what their government is doing on their behalf

To understand and know how government policies are created, administered and enforced

To examine how hard earned/paid tax dollars are being spent

To access the records and documents related to these objectives

For Governments

Establish Legal Process

support constitutional guarantees on right to information/freedom of expression

Enable Requests

support for receiving gov't held information freely/at minimum cost

Enact Limited standard exceptions

Introduce Voluntary Publication

certain information disclosed in public interest

Why Vanuatu adopted RTI

VANUATU

- * Universal Declaration of Human Rights
- * Endorsed Pacific Plan - 2005
- * Signed UNCAC treaty - 2011
- * Passed RTI Law – 2016
- * The implementation of the RTI legislation will help close the gap towards achieving the SDGs by 2030.
- * Established anti-corruption committee 2016

UN-PRAC

- * A joint UNDP/UNODC initiative
- * Supports PICs:
 - * To effectively implement commitments under UNCAC
 - * Strengthen anti-corruption legislation and policies
- * Supports Vanuatu particularly with the development of RTI policy and RTI Law

RTI - INTERNATIONAL

RTI AROUND THE GLOBE

UNCAC Treaty – 2005

- * **Article 10 - Commitment/Obligation** to introduce anti-corruption/accountability measures for positive national development outcomes
- * State parties required to take measures to enhance transparency in public administration including the adoption of transparency laws such as RTI Laws, procedures or regulations
 - * **Over 100+ countries have enacted RTI laws**
 - * **Over 11 Pacific Island countries** have ratified

RTI - REGIONAL

- * Vanuatu – RTI Law 2016
- * Fiji – Draft FOI Law 2016
- * Tonga – Information Disclosure Policy 2010
- * Solomon Islands – Draft RTI Law 2016
- * Australia – FOIA 1982
- * New Zealand – Official Information Act 1982

Recollect on - OBJECTIVES OF RTI LAWS

What it isn't

- * It is NOT US AGAINST THEM
- * It is NOT TO SOLELY CAUSE SCANDAL for political leaders
- * It is NOT ONLY FOR THE MEDIA

RTI – What it means (exercise)



- * **Right to** _____ information
- * **Duty** to _____ information
- * To _____ Information
- * To make it _____ available/accessible
- * To _____ information _____ when it is proven to be against the best public interest

RTI – What it means (exercise)



- * **Right** to seek information
- * **Duty** to give information
- * To **store, Organise** Information
- * To make it easily **available/accessible**
- * To **withhold information only** when it is proven to be against the best public interest

PURPOSE OF VANUATU RTI LAW

*People i
kat raet
blong save*

GIVE effect to the right to freedom of expression under the Constitution (Article 5).

***PROMOTE** transparency, accountability, and national development by empowering and educating the public to understand and act upon their rights to information

***PROVIDE** access to information held by Government agencies, relevant private entities and private entities, subject to exceptions

***ESTABLISH** voluntary and mandatory mechanisms to give the public the right to access to information (**Pro-active publication**)

***INCREASE** public participation in governance

RTI Law

*It was
unanimously
adopted by
Parliament*

- * Part 1: Preliminary matters
- * Part 2: Disclosure and Access to Information
- * Part 3: Third Party Notification And Intervention
- * Part 4: Amendments of Personal Information
- * Part 5: Exemptions
- * Part 6: Information Commissioner
- * Part 7: Enforcement by the Information Commissioner
- * Part 8: Measures to promote Access to Information
- * Part 9: Miscellaneous Provisions



VANUATU RTI LAW FRAMEWORK

1. ESTABLISHES THE RIGHT OF ACCESS

s. 8 – *Subject to the Act, a person may access any information from a gov't agency, relevant private entity or private entity*

2. FACILITATES THE RIGHT OF ACCESS:

Requests



Proactive Publication



Exemptions



Enforcement



Penalties

SCOPE

s. 5

RTI Act and Other Laws

1. **Act to prevail** if any of its provisions conflict with a provision of any other Act other than the Constitution.
2. Gov't agency/relevant private entity not prevented from giving access to information:
 - * other than under the Act
 - or
 - * if required to do so by any other law, policy, practice or court order

Day 1

WHO CAN APPLY?

Who Can Apply?

s. 8 – *Subject to the Act, a person may access any information from a gov't agency, relevant private entity or private entity*

1. **Anyone** - whether or not s(he) is a Vanuatu citizen or resident
2. **Companies, Media, and NGOs**
3. **Employees of a public entity** (good internal communications and staff relations should lessen the need for this)
4. Persons who claim a record of a gov't agency/relevant private entity/private entity contains personal information which is used for administrative purposes is *incomplete, incorrect out of date or misleading* and wish to amend/annotate the record (s. 34)

“Knowledge is power,
information is
liberating”

Government of the people, by the people, for the
people, shall not perish from the Earth:
Abraham Lincoln

- *RTI Act: Widest consultation*
- *People's Act*



- Kofi Annan
- Former secretary general of the United Nations



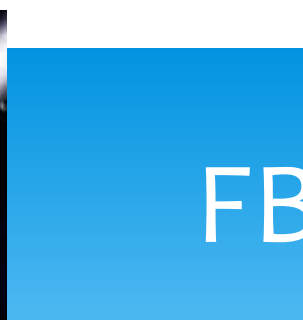
Ambae Video

*Production of
Transparency
International
Vanuatu

Benefits of Openness



- Increases public knowledge of the activities and structure of government and encourages participation in national decision-making.
- Greater public understanding of how government functions and consistent access to government records reduces impropriety and corruption.
- Records management practices improve.



- * **The RTI policy is also timely in other respects, coming at a time when there is considerable interest in right to information on the part of civil society and the media, and with global development partners increasingly requiring greater transparency and accountability from aid recipients.**



Benefits of Openness ctd.

- Consistently and proactively releasing information builds trust, demonstrates commitment to transparency and shows that both government and politicians understand that they are accountable to the public that they serve.
- Improves the relationship between state and citizen.



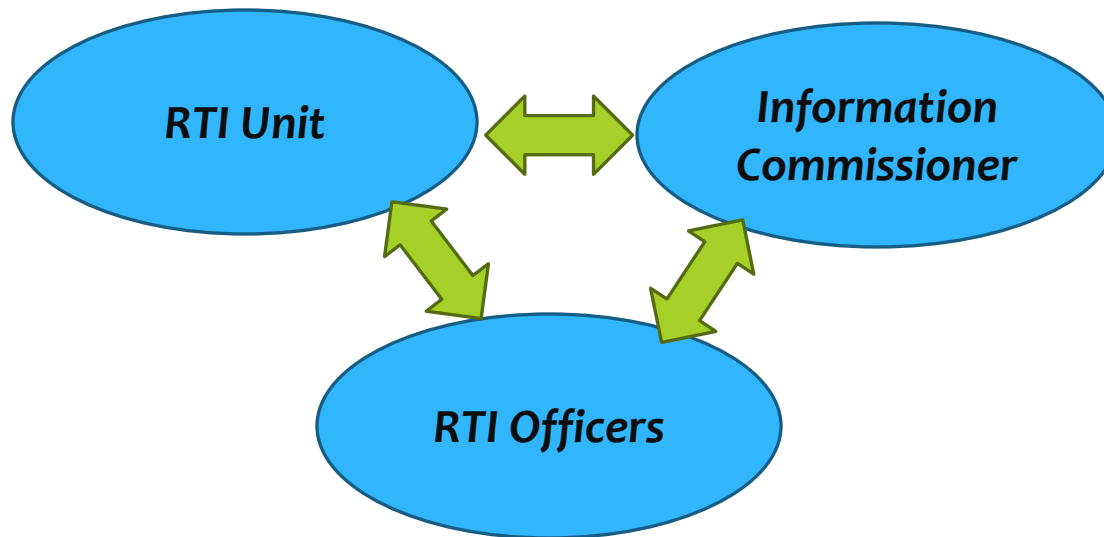
Benefits of Openness ctd.

- Even when information about wrongdoing is released it shows **honesty** and **integrity**, deters such actions in the future leads to corrections, and often calls for revision of general policy and procedures to prevent similar occurrences.



RTI Implementing Structure (The Framework)

- * For an RTI law to be effective it needs to be supported by active implementation measures and supported by an institutional framework to undertake this task. **(RTI National Policy, RTI Legislation & implementation Plan)**



Implementation provision under RTI Act

THE RIGHT TO KNOW

The law provides for the phase implementation period of two and a half years (30 months).

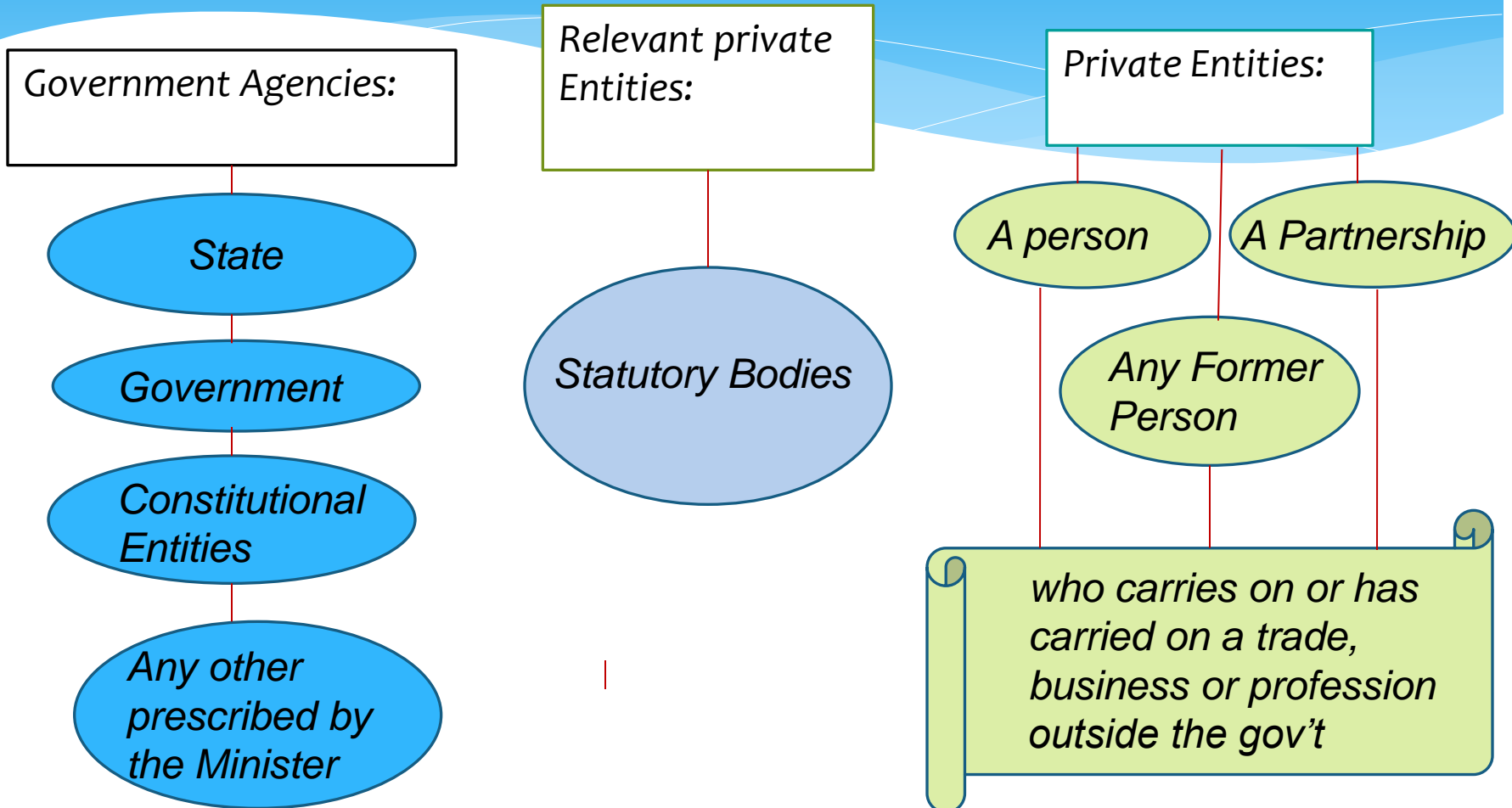
The law applies by order made by Prime Minister who is responsible for the Act

First Order 6 month after gazettal of the Act

2nd Order within two years before due date

3rd at the end of 30 month period

RTI law applies to who?



WHO CAN APPLY?

Who Can Apply?

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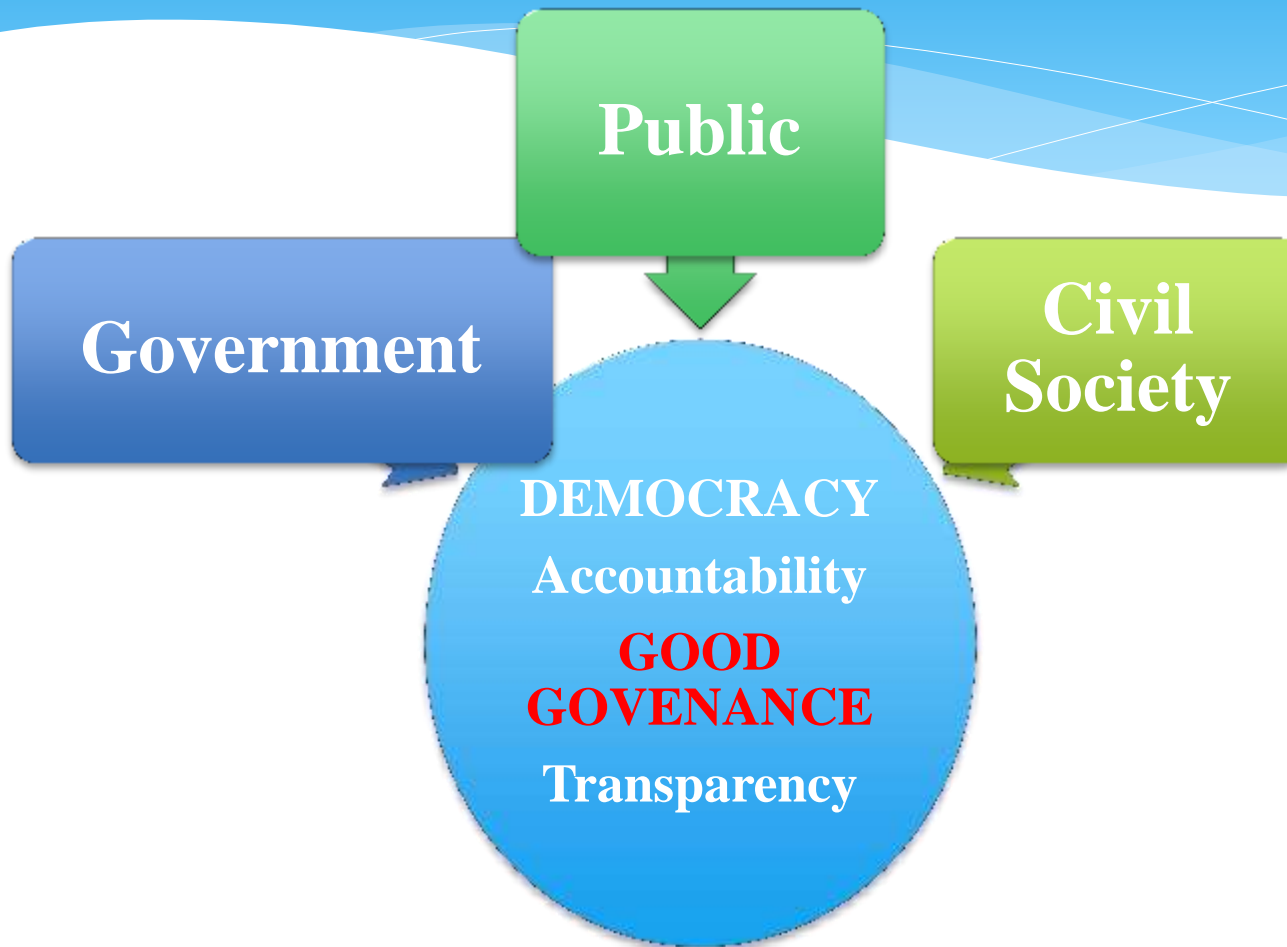
SCOPE EXCLUSIONS

s. 4

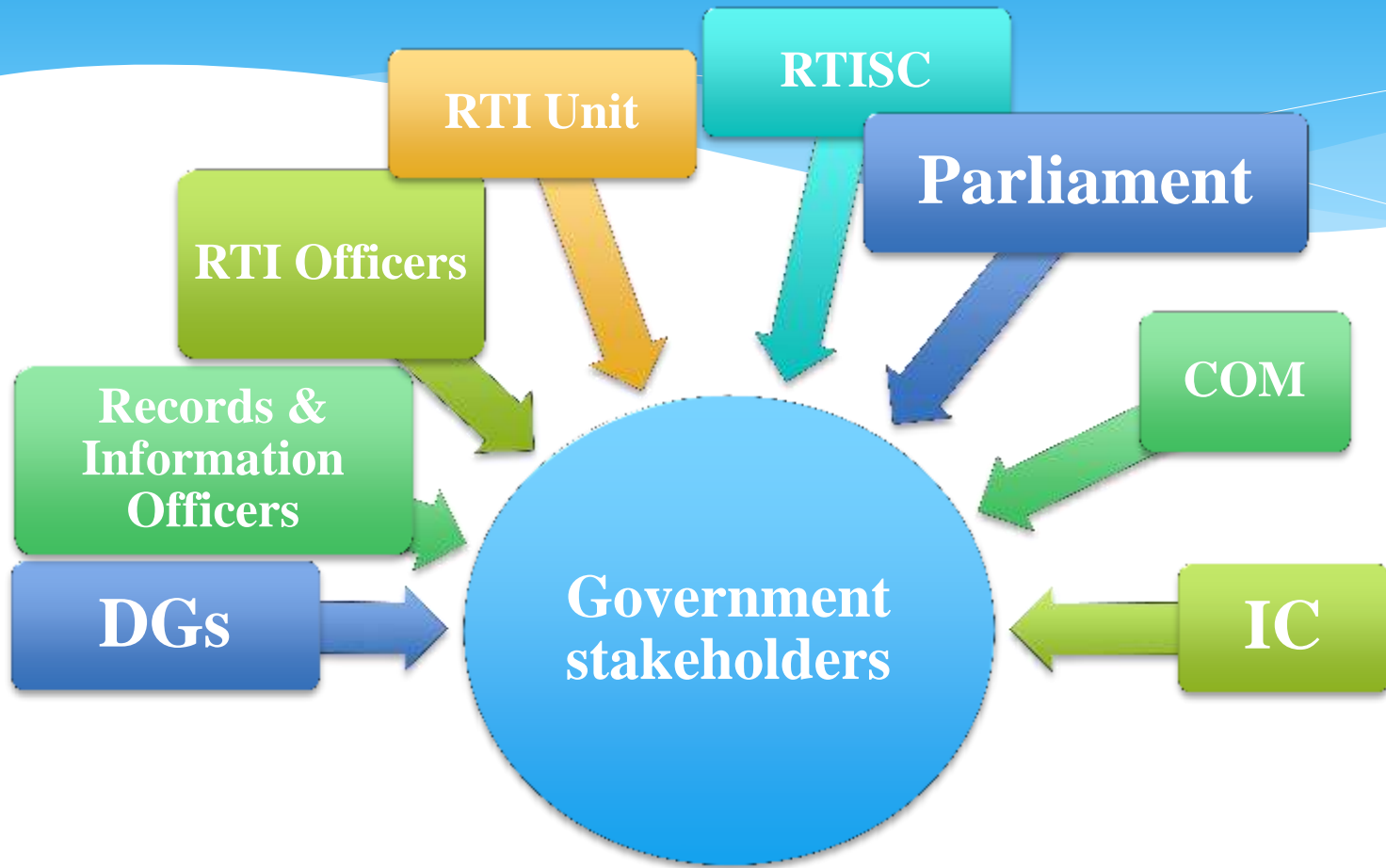
Act does not apply to:

- * information held by the system of customs and traditions practiced throughout Vanuatu;
- * information of a relevant private entity relating to any function that is not public service related or funded in whole or in part by the Government;
- * information held by a publicly owned media body.

RTI STAKEHOLDERS

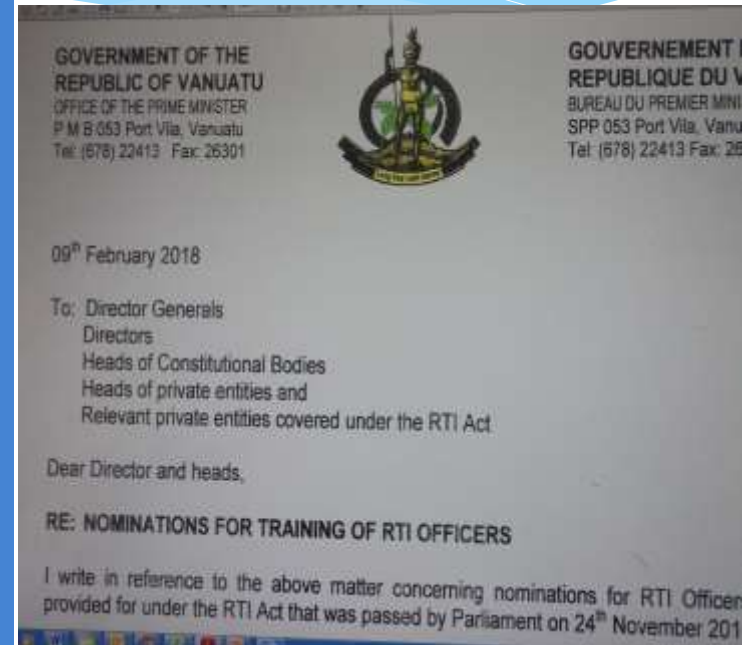


GOVERNMENT STAKEHOLDERS



PM's support for RTI

.....my Government is fully committed to implementing this RTI policy and legislation. As the head of the Government of the Republic of Vanuatu and also being the office holder responsible for the implementation of the RTI Act, I call on your full cooperation in ensuring that preparations for implementation of the Act is successfully carried out within the specified 30-month period provided under the Act.



LUNCH!



Role of RTI Steering Committee

- * to provide **direction** for, and **oversight** of, the **implementation** of the Right to Information Policy;
- * to assist with the monitoring and evaluation of the implementation of Policy and Act;
- * to **advise** the Government on the development of necessary Regulations and any amendments to any legislation in order to **ensure consistency** with the **intentions** of the Right to Information Policy and this Act;
- * to receive reports on the progress and implementation and the achievement of milestones under the Right to Information
- * Implementation Plan, and review and make recommendations on the findings of these reports to the Minister, including but not limited to, risk management and further policy or planning needs in relation to right to information;

Role of RTI Unit

- The RTI Unit is the specialised unit to provide leadership and Support Functions such as:-
 - **Co-ordination** of implementation
 - **Training** of RTI Practitioners
 - **Responding** to agencies questions
 - **Monitoring** and **Reporting**
 - **Sustainability** of implementation
 - **Public education** (role dedicated)



ROLE OF RTI UNIT & RTI STEERING C'TTEE

RTI Unit

s. 69

- * Train RTI Officers
- * Central resource for RTI Officers
- * Develop/monitor Nat. Impl. Plan
- * Develop educational materials
- * National Code of Practice (RIM)
- * Receive reports from entities
- * Public Education/Awareness
- * Secretariat to RTISC

RTISC

s. 74

- * Oversight & monitor RTI Policy implementation & RTI Unit
- * Support, advise, receive reports from RTI Unit
- * Report to the Council of Ministers
- * Make recommendations on Regulations & RTI implementation

ROLE OF INFORMATION COMMISSIONER

s. 64

* **RTI Info Commissioner**

- * Independent/not subject to the direction of any person or body
- * Reports annually to Parliament
- * IC and staff protected from civil or criminal liability for anything done or omitted to be done in good faith
- * Hears, investigates and decides appeals
- * Monitors and reports on RTI compliance
- * Undertakes training/ awareness activities for officials/general public

ROLE OF INFORMATION COMMISSIONER

s. 64

Conducts Appeals

Resolves Appeals

Mediation,
negotiation
conciliation

**Independent
Investigations**

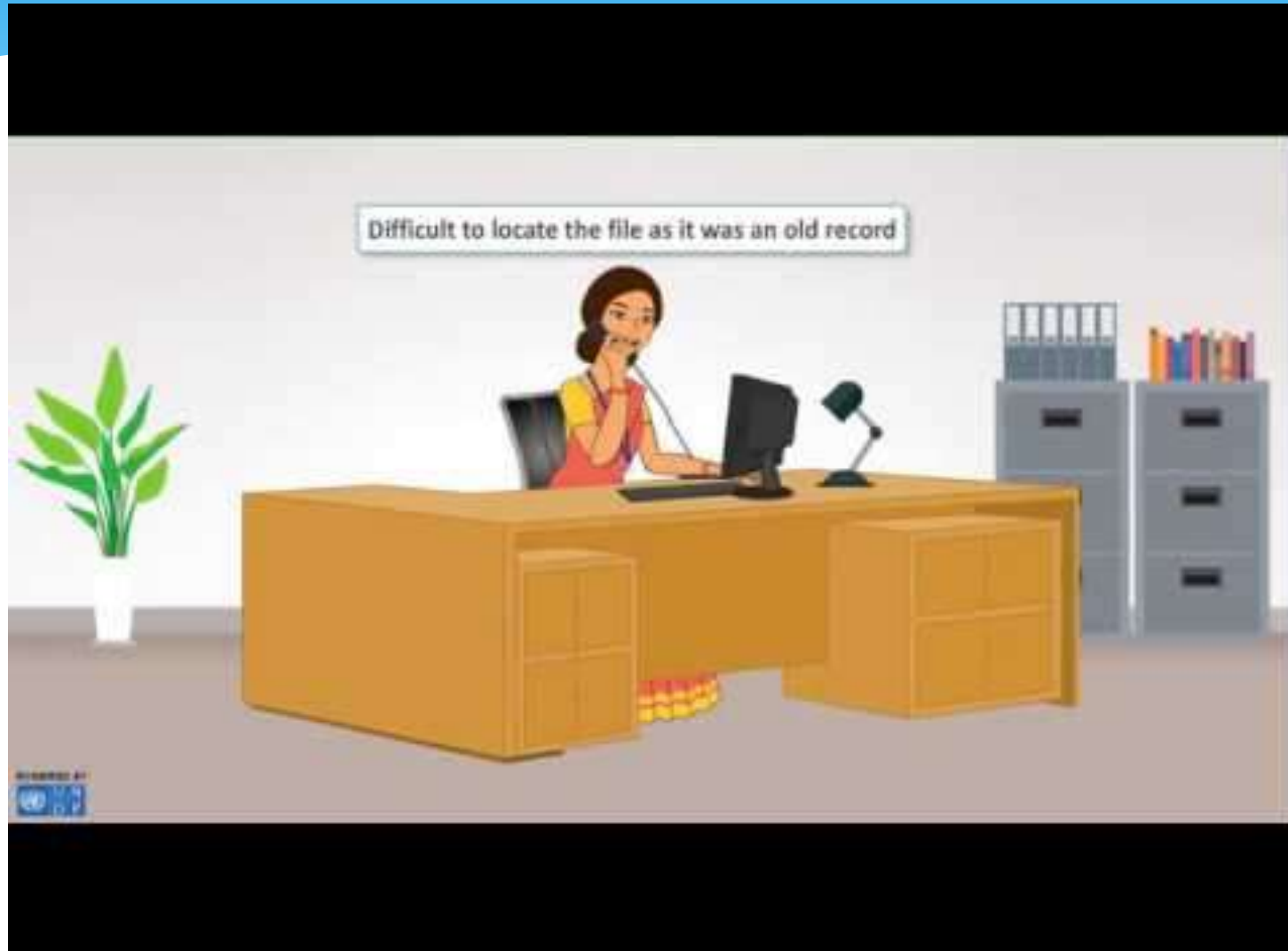
Public Guidelines

Access to information
RTI Officer contact info
Proactive Publication
Appeals Process

**Proactive
Publication
Guideline**

- **Code of Practice
(RIM)**

RTI OFFICER



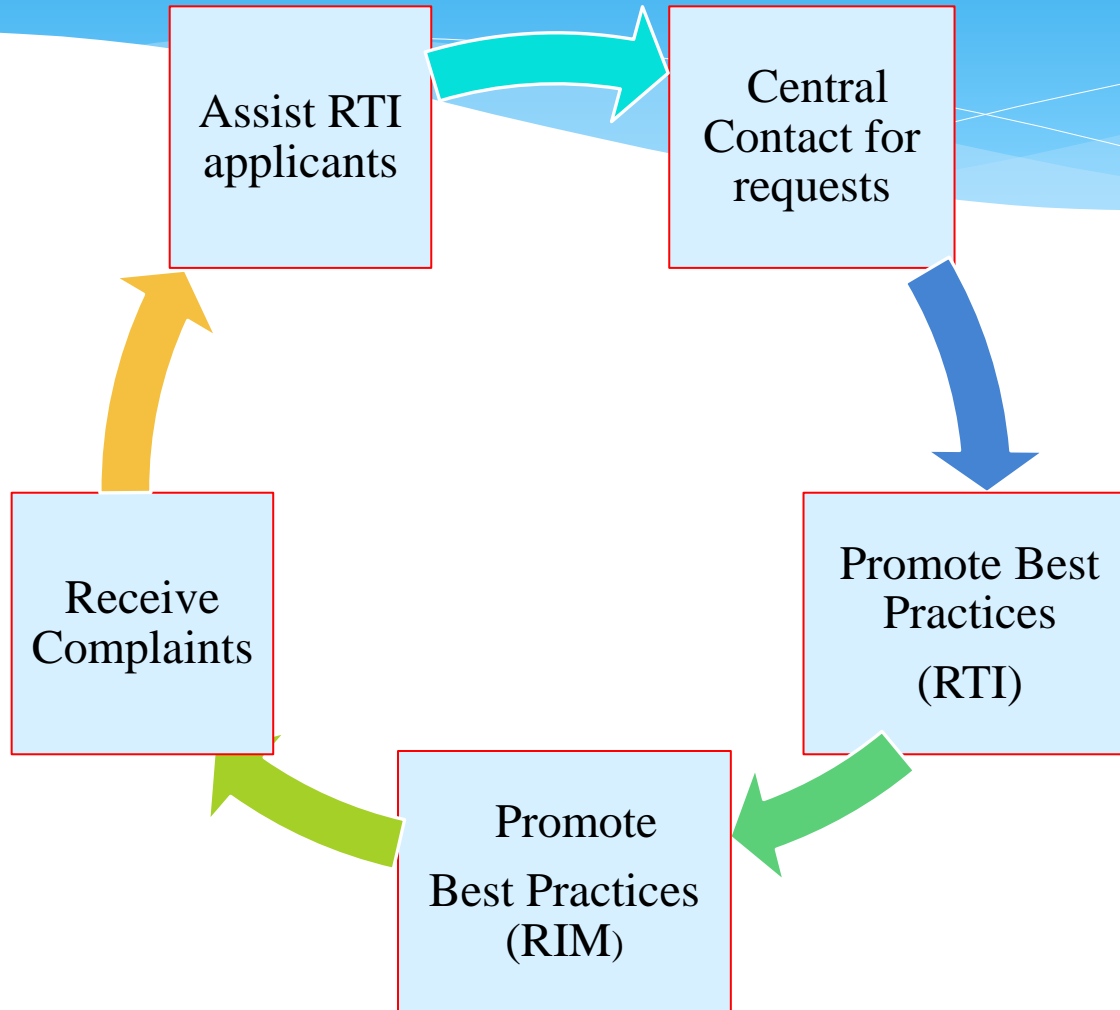
Discretionary power of the RTI Officer

- * Government agency or a relevant private entity must not deny access to information based on:
 - * any of the applicants reasons as to why the application is being made; or
 - * any opinion of an official as to the applicant's reason for applying.

ROLE OF RTI OFFICER



ROLE OF THE RTI OFFICER



Did we miss anything?

Right To Information Officers are appointed in each public authority to:

- Promote best practices
- Receive requests and make decisions on each application
- Assist individuals seeking access
- Receive complaints
- Ensure full compliance with the FOI Law



Reporting



Reporting

***Monthly Reporting
Template***

RTI Requests

*Processing an
RTI Request*

*RTI Request
form*

RTI REQUEST BASICS

Applicant's Obligations

APPLICANT'S OBLIGATIONS s. 13

- * Address request to most relevant public entity (may use pseudonym)
- * Include postal/email address, fax number for sending information
- * Telephone number
- * Provide good details, if possible, about what is requested
- * Form/language of access
- * Indicate if application on behalf of another person & provide proof of that capacity (to the reasonable satisfaction of the RTI Officer)

RTI REQUEST BASICS

Reason for Requests?

No. Applicant need not provide, and public entity **MAY NOT** require reasons for the application

Cannot deny access to information for lack of a reason for the application

Cannot deny access based on opinion of official as to possible reason for application

Reason only required in application to a **Private Entity** (s. 9)

Application not addressed to RTI Officer

- * Applicants do not have to direct requests to the RTI officer.
- * RTI officer cannot ignore or refuse request if addressed to other staff
- * Train customer-facing staff and mail handlers to immediately pass letters or emails that appear to be seeking information under the RTI Act to the RTI officer.

RTI REQUEST BASICS

Identifying RTI/Non RTI Requests

ARE ALL REQUESTS RTI REQUESTS?

Non RTI Enquiries

- * Requests that can be handled by usual customer service procedures
(*ex. if a member of the public wants to know whether their child has secured a place at a school or what are the plans for road repairs in a community*)

RTI Requests

- * Requested info cannot be provided immediately;
or
- * Applicant clearly states that the enquiry is being made pursuant to the RTI Act.

Tip

- Request can be in the form of a question. Ex. "*Does this agency have any information on tenders?*"
- Clarify these types of requests with the applicant before processing the request.

RTI REQUESTS

First Steps

Request Intake & Keeping Track of Statutory Response Times

- **Stamp the date** on the request

- Persons resp. for incoming mail should be sensitized to not waste time in internal mail process

- **Immediately send to RTI Officer:**

Mail Room

marked “*RTI*”; addressed to the designated RTI Officer or the RTI division.

RTI Officer

- **Open file** to be a record of all decisions taken
- Include **tracking/recording form** on file cover - to help route the file if sent to other persons
- Input return dates on folder - keeps everyone involved aware of the timelines.

forms

Coffee!



Day 1

RTI TRAINING QUIZ



*End of Day 1





DAY 2 = Session 1

RTI Officers Training Sessions



DAY 1 RECAP!



- * RTI Officer's Role
- * Role RTISC
- * Role IC
- * RTI Requests
- * RTI Act and other laws
- * Who can apply
- * Benefits of openness
- * Initial Statement of Organization
- * RTI Applicants
- * RTI Stakeholders
- * Government stakeholders

”Public Interest”

No definition of “PUBLIC INTEREST”

But there are guides under the law to help make a decision on what is and what is not public interest

FACTORS TO CONSIDER

- * the objects of the RTI Act;
- * the prevention of the commission of offences or other unlawful acts;
- * the prevention of a miscarriage of justice, abuse of authority or neglect in the performance of an official duty;
- * the promotion of effective use and oversight of public funds and expenditure;
- * whether the information is to be used for public debate or discussions;
- * the promotion of public participation in the political process and decision-making;
- * the avoidance of any danger to the health or safety of an individual or the public;
- * the avoidance of un-authorized use, or misuse of public funds;
- * the protection of the environment

DAY 3

PUBLIC INTEREST TEST s. 37 - 38

FACTORS NOT CONSIDERED

- * that access to the information could result in embarrassment to, or cause a loss of confidence in the Government of Vanuatu;
- * that access to the information could result in any person misinterpreting or misunderstanding the information;
- * that the author of the document was, or is of high seniority in the Government agency or relevant private entity to which the application for access to the information was made;
- * that access to the information could result in confusion or unnecessary debate.

Defining Public Interest

- **“Public interest” means, but is not limited to things that may or tend to**
 - promote greater public understanding of the processes or decisions of public authorities;
 - provide reasons for decisions taken by Government;
 - promote the accountability of and within Government;
 - promote accountability for public expenditure or the more effective use of public funds;
 - facilitate public participation in decision-making;
 - improve the quality of services provided and the responsiveness of government to the needs of the public
 - deter or reveal wrongdoing or maladministration;
 - reveal information relating to the health and safety of the public, or the quality of environment or heritage sites, or measures to protect any of those matters; or
 - reveal untrue, incomplete or misleading information or acts of a public authority.

Not all are subject to “Public Interest”

- * **Seven exemptions** are subject to the public interest test.
- * This means that the record even though it falls within an exemption, must be disclosed if its disclosure is in the public interest.
- * So, under section 21 of the RTI Law, a record is exempt if its disclosure would reveal a trade secret; however, as the public interest test applies to this exemption by virtue of section 26 of the RTI Law, the record must be disclosed if it is in the public interest to do so.

PUBLIC INTEREST TEST s. 37 - 38

Public Interest Test:

- * **Means:** there is compelling reason for the exempt information to be disclosed
- * **Does not mean** “*something the public is interested in*”
- * Interest in disclosure **must be strong or overwhelming enough to clearly outweigh the purpose of the exemption.**
- * Not sufficient, however, that a matter should be *of interest* to the public.
- * Must be *in the public interest* for the exemption to be overridden i.e. a benefit to the public beyond mere satisfaction of curiosity

PUBLIC INTEREST TEST s. 37 - 38

Even if any of the 9 exemptions applies:

- * the *public interest* in disclosure might *outweigh the purpose* of the exemption

The Public Interest Test (PIT) is an override of exemptions designed to promote (for ex.) transparency in public spending/accountability for actions of gov't agencies/public officials.

PUBLIC INTEREST TEST s. 37 - 38

CONTEXT

- * Described as being at the heart of RTI Laws
- * Public Interest test is a recognition that public bodies act on behalf of the public as a whole – in the public interest - not in the name of, or on behalf of individuals or private interests.
- * This means that the decisions RTI Officers make on the release of information by their agencies must be taken **with the interests of the public as a whole firmly at the forefront of those decisions AND from the starting presumption that disclosure is in the public interest.**
- * The underlying assumption is that information can be released unless the public interest in withholding can be shown to be greater than the public interest in release

APPLICATION

- * Must be used when considering whether or not information should be withheld under an RTI exemption
- * Balance of public interest regarding disclosure of a particular piece of information may change over time
- * Factors for and against disclosure must be weighed in response to each request when it is received

EXEMPTION - PLERIMINARY

- * A person making a request for information may not be entitled to have access to all of the information he wants: there are exemptions set out in Part III of the RTI Law.
- * Some exemptions, like the exemption for danger to public health, are clearly in everyone's interest. Others, like the national economy exemption, are included to ensure the effective running of the Government and to maintain a vibrant economy and trusted international relations.
- * Some of the exemptions are absolute and are therefore not subject to a public interest test, e.g. a record of consultations or deliberations arising during the course of proceedings of the Cabinet or a Cabinet committee.

EXEMPTION - PLEERIMINARY

- * Some of the exemptions only apply if disclosure will result in prejudice to a particular interest; if there is no prejudice, there is no exemption and the record must be disclosed. For example, an official record of monetary policy, particularly
- * some advice, can be exempt under the RTI Law if its disclosure, or as the case may be its premature disclosure, would or could reasonably be expected to, have a substantial adverse effect on the economy of Vanuatu.

EXEMPTIONS S. 42 -50

Preliminaries



DENIED

Burden of Proof s. 39

RTI Officer must prove:

Step 1

that denial of access is covered under an exemption

Step 2

that the **harm being prevented/ interest being protected** by the exemption **outweighs the public interest** in the disclosure of the information.

EXEMPTIONS S. 42 -50

Preliminaries

Exempt Status Duration



- * Expires if more than 10 years from the date of exempt designation - s.51
- * IC may review within 2 years of exempt status in consultation with Minister - s. 51(3)
 - * IC may remove status if no longer applicable - s. 51 (4)

NOTE: Time limit not applicable to exemption of personal information of natural persons

CLASSIFIED

Classified Information Not Automatically Exempt (s. 40)

- * Not exempt from access merely because it is categorized as classified/confidential/secret

Information Already Publicly Available (s. 41)

- * Must still assist the applicant by providing the information or clearly indicate where the information is published (ex. providing a functioning link)

EXEMPTIONS S. 42 -50

Preliminaries

Refusing to indicate whether or not the agency holds the information requested.

- * 7 of the 9 exemptions state this

- * Confirming or denying whether a document exists can, in some instances, cause harm

(ex. knowing that an agency possesses a copy of a particular document, coupled with the knowledge that the document could originate from only one source, might disclose a confidential source).

- * Public entity may give the applicant notice in writing that *it neither confirms nor denies* that it holds the information.

- * **A Ground for Appeal**

- * Has the effect of refusing access **without providing a justification/reason**

EXEMPTIONS S. 42 -50

Preliminaries

Arrangements with the Attorney-General's Department:

- * To dedicate specific staff attorneys to assist RTI officers with application/interpretation of exemptions when need arises
- * Very helpful resource as it increases confidence of public entities in administering the RTI Law

**Protect
Consumer Rights**

> HOW TO LODGE A COMPLAINT?



EXEMPTIONS!

An illustration featuring a hand in a blue and white checkered shirt sleeve holding a brown cardboard box. To the left, a yellow box is labeled 'RTI' in blue letters. In the foreground, a document with a blue circular stamp is visible. The background is a light blue and green gradient with some motion lines.

Exemption from disclosure of information under RTI

RTI Exemptions



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- * **Personal information**
- * **Legal privilege**
- * **Commercial and confidential Information,**
- * **Law enforcement,**
- * **Defense and Security**
- * **Health and safety**
- * **Economic interest of the state**
- * **Policy Making and Operation of Agencies**
- * **Information relating to protected sites and the environment**

Day 3
EXEMPTIONS
Personal Information – s. 42

PERSONAL INFORMATION

Refuse to indicate whether or not you hold the information

Refuse to grant access to such information

If it would involve disclosure of a third party's **personal information*

***"personal information"** - *information about a person, whether living or deceased.*

EXEMPTIONS

Personal Information – s. 42

education/medical/criminal/employment history	any identifying number, symbol etc. assigned to the person;	address, fingerprints or blood type	personal opinions, views or preferences of the person
correspondence sent by the person that is implicitly or explicitly of a private or confidential nature	financial transactions	the views or opinions of another individual about the person	race, gender, sex, marital status, national, ethnic or social origin, color,
	sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief,	culture, language and birth of the person;	

EXEMPTIONS

Personal Information – s. 42

EXEMPTION DOES NOT APPLY TO:

- * A Third Party's personal information *where the third party consents*
- * Persons/estates represented by Guardians, Next of Kin, Executors
 - * Persons Who Have been Deceased For More Than 20 Years
- * Government Employees (past/current **and** related to their functions)
- * Government Contract Service Providers (related to the services provided or the gov't funds provided)

What did I just said?

- * Despite the provisions of this Act, a Right to Information Officer may:
 - * refuse to indicate whether or not it holds the information requested by an applicant; or
 - * refuse to grant access to such information,
- * if to do so would involve a disclosure of the personal information of _____
- * But it does not apply if:
 - * the third party has _____ to the disclosure of the information; or
 - * the applicant:
 - * is the _____ of the third party, or the _____ or the _____ of the will of a deceased third party; and
 - * provides _____ of the capacity in which the application is being made to the satisfaction of the Right to Information Officer; or
 - * the third party has been deceased for more than _____ years.

Personal information

- * Despite the provisions of this Act, a Right to Information Officer may:
 - * refuse to indicate whether or not it holds the information requested by an applicant; or
 - * refuse to grant access to such information,
- * if to do so would involve a disclosure of the personal information of **third party**.
- * But it does not apply if:
 - * the third party has **consented** to the disclosure of the information; or
 - * the applicant:
 - * is the **guardian** of the third party, or the **next of kin** or the **executor** of the will of a deceased third party; and
 - * provides **proof** of the capacity in which the application is being made to the satisfaction of the Right to Information Officer; or
 - * the third party has been deceased for more than **20** years; or

EXEMPTIONS

Legal Privilege – s. 43

LEGAL PRIVILEGE

Refuse to indicate whether or not
you hold the information

or refuse to communicate
information

if the information is privileged from production in legal
proceedings

unless the person entitled to the privilege waives it.

EXEMPTIONS

Legal Privilege – s. 43

1. Lawyer-client relationship to obtain professional advice
2. Protects confidential communications between lawyer and client for the purposes of giving or obtaining legal advice;

NOTE

- * It is the ***purpose*** of the communication (the giving or receiving of legal advice or for use in actual or anticipated litigation)
- * **not the *information*** itself, that determines if the record or part of it is exempt as legally privileged

Coffee!



EXEMPTIONS

Commercial & Confidential Information – s. 44

Commercial & Confidential Information

refuse to disclose information

if the information obtained from a third party and to communicate it would constitute an *actionable breach of confidence*

the information was obtained in confidence from a third party and contains a *trade secret*; or
its communication would likely seriously prejudice the commercial or financial interests of that third party;

if the information was obtained in confidence from another State or an international organization, and to communicate it would seriously prejudice relations with that State or the international organization.

EXEMPTIONS

Commercial & Confidential Information – s.

44

PURPOSE

- Protects secret or commercially sensitive information
- Prevent people from using such information to gain an unfair benefit or advantage
- Protects commercial interests of third parties and also of the public entity that holds the information

****Should not be used to block the release of contracts with private bodies which provide public services.**

EXEMPTIONS

Commercial & Confidential

Public entities hold vast number of records of:

- * individuals, companies and other organizations
- * such third parties supply information without any idea that it might be disclosed to anyone expressing an interest in it.

* **Government Contracts (procurement), Licenses/Permit Applications**

3rd Parties' Information:

- * financial affairs
- * output, profit margin, etc.
- * pricing structure
- * product details, design or constituent elements
- * manufacturing techniques
- * expansion plans, marketing strategy
- * customer information

EXEMPTIONS

Commercial & Confidential Information – s. 44

Practical Steps by Public Bodies:

Submission of Tenders

- * Inform companies submitting tenders for government contracts that, if successful, access may be given under RTI to particular aspects of their tender

Regulatory Functions etc.

- * When seeking information from business or commercial entities, ask the company, at the time of submitting the information, to indicate which parts they regard as being commercially sensitive and why.

Passage of Time

- * Can render what was once confidential, no longer confidential
- * Conduct regular reviews to ensure that all information thought to be confidential continues to be so

EXEMPTIONS

Commercial & Confidential Information – s. 44

Consider including the following standard statement in:

- *tender documents*
- *invitations for submissions*
- *standard forms requiring information to be supplied*

"The public body undertakes to use its best endeavours to hold confidential, any information provided by you in this (tender / form / submission, etc.). subject to the department's obligations under law, including the Right to Information Law which came into force on date covered under Ministerial Order.

Should you wish that any of the information supplied by you in this tender / form / submission should not be disclosed because of its sensitivity, you should, when providing the information, identify the same and specify the reasons for its sensitivity.

The public authority will consult with you about this sensitive information before making a decision on any Right to Information request received"

EXEMPTIONS

Health & Safety – s. 45

Health & Safety

Refuse to indicate whether or not you hold certain information



or refuse to grant access to information



if to do so *would likely* endanger the life, health or safety of *an individual*.

EXEMPTIONS

Law Enforcement – s. 46

Law Enforcement

Refuse to indicate whether or not you hold the information

Refuse to grant access to information,

if to do so would likely cause serious prejudice to:

the prevention or detection of crime;

the apprehension or prosecution of offenders;

the administration of justice;

the assessment or collection of any tax or duty;

the operation of immigration, biosecurity and Customs controls;

an assessment of whether a civil or criminal proceeding, or regulatory action pursuant to any Act, is justified.

EXEMPTIONS

Law Enforcement – s. 46

Law Enforcement

Refuse to indicate whether or not you hold the information

Refuse to grant access to information,

if to do so would likely cause serious prejudice to:

the assessment or collection of any tax or duty; or

the apprehension or prosecution of offenders;

the administration of justice;

the assessment or collection of any tax or duty;

the operation of immigration, biosecurity and Customs controls;

an assessment of whether a civil or criminal proceeding, or regulatory action pursuant to any Act, is justified.

EXEMPTIONS

Law Enforcement – s. 46

* *“Serious prejudice” – causing serious harm*

* **EXAMPLE**

During an Investigation

- information about the identities of witnesses; or
- information related to a case that is being put together against a suspect

If released, **witnesses could be put in danger or the case against a suspect could be jeopardized.**

EXEMPTIONS

Defense & Security – s. 47

Defense & Security

Refuse to indicate whether or not
you hold information

Refuse to grant access to
information:



if it would, or *would likely cause serious prejudice* to the defense or
national security of Vanuatu.

EXEMPTIONS

Defense & Security – s. 47

Examples

- * policy, strategy, planning and intelligence records;
- * operational orders, tactics and rules of engagement information;
- * records related to the defense or reinforcement of other countries including any formal or informal arrangements and agreements;
- * information published during a conflict, detailing the number of soldiers defending a boundary, where they were positioned or their strategic plans.

EXEMPTIONS

Economic Interests of the State – s. 48

Economic Interests of the State

Refuse to indicate whether or not you hold information

Refuse to grant access to information



If it would likely cause serious prejudice to:

the ability of the Gov't to manage the economy

or the legitimate commercial or financial interests of the public entity.

EXEMPTIONS

Economic Interests of the State – s. 48

Examples

- * Information about the national budget (must be withheld until presented in Parliament)
- * Information about changes in interest, currency or exchange rates, taxes;
- * Regulation or supervision of banking, insurance/other financial institutions;
- * Proposals for borrowing and foreign investment.

EXEMPTION DOES NOT APPLY:

- to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

EXEMPTIONS

Policy Making & Operations of Agencies – s.

49

Policy Making & Operations of Agencies

Refuse to indicate whether or not
you hold the information

Refuse to grant access to
information



if to do so would likely cause serious prejudice

the effective formulation or
development of Government
policy

or adversely affect the implementation
of a policy by the premature
disclosure of that policy

EXEMPTIONS

Policy Making & Operations of Agencies –

s. 49

Key Elements

“formulation of policy”

- usually the **early stages of the policy process**
- Includes policy options/strategies/risks/consultations/recommendations/submissions/ministerial decision
- *End of the policy formulation process - Public announcement of Ministerial decision*

“development of policy”

- viewed as **the process of review/improvement/adjustment of existing policy**

EXEMPTIONS

Policy Making & Operations of Agencies – s. 49 Key Elements

EXAMPLES:

- * Cabinet papers
- * The records of the deliberations of the Council of Ministers, Secretaries and other offices.

EXEMPTIONS

Policy Making & Operations of Agencies – s. 49

DOES NOT APPLY TO:

- **facts**
- **analyses of facts**
- **technical data**
- **statistical information**
used in the policy making process

EXEMPTIONS

Protected Sites & the Environment – s. 50

No grant of access

if disclosure would *reasonably be expected*

to result in the *destruction, damage, or interference with:*

Conservation of any historical, archaeological or anthropological resources;

Anything declared to be a national monument, designated as protected national heritage or otherwise protected under Vanuatu laws;

Species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable; or any other rare or endangered living resource

CASE STUDY

RTI Request

In an RTI request dated November 2017, a prominent newspaper sought answers related to the death of a man in the home of a prominent attorney. Since the incident in September 2016, investigators have said that they have not made a breakthrough in the matter, inviting speculation that they were not putting energy into the case, or had something to hide.

The request was directed to the RTI Unit in the Ministry of National Security. The questions were:

- 1. Did the victim get a single gunshot?*
 - 2. Was a bullet found?*
 - 3. If the answer to 2 is yes, was a test/were tests done on said bullet?*
 - 4. If the answer to 3 is yes, what was/were the result/results?*
 - 5. Why hasn't this information been released in the public domain?*
 - 6. Why has a suspect not been taken into custody?*
 - 7. Did the bullet come from a gun belonging to a prominent person?*
 - 8. Did the bullet come from a gun belonging to a politician?*
 - 9. Was anyone questioned in relation to the findings of the ballistic tests?*
 - 10. What did the autopsy reveal as it relates to how Junior was murdered?*
- 1. Which exemptions, if any, would you apply in responding to the request and why? 2. If an exemption applies, are there public interest considerations favoring disclosure?*

Group exercise

* Divide into four groups

Example 1: Ministry of Internal Affairs

- * *You are the right to information officer in the Ministry of Internal Affairs. You receive a request for information about the policy and practice of the Ministry on the procurement of rifles for the army. The applicant asks about the type of rifles procured. The information would reveal that a large number of rifles used by the infantry were often defective – they overheated and jammed when fired repeatedly. Do you provide the requested information?*
- * To decide whether this information can be disclosed under the law, you need to apply the exemptions test:
- * **1. Does this request relate to one of the defined interest listed in the exemptions sections of the RTI Act?**
- * **2. Would the disclosure of this information cause substantial harm to that interest?**
- * **Is there anyway a public interest in disclosing the information?**

Group 2: State-Owned Company

- * *You are the PIO of a state-owned manufacturing company. The research and development division of the company has developed a revolutionary new production technique. This technique is well in advance of anything developed by the company's international competitors. It will dramatically reduce the number of workers required. A request for information about the process has been lodged by an environmental group, which is concerned about the danger of liquid waste from the new technique seeping into water courses. Do you provide the requested information?*
- * To decide whether this information can be disclosed under the law, you need to apply the exemptions test:
- * **1. Does this request relate to a defined interest under the RTI Act?**
- * **2. Would the disclosure of this information do substantial harm to that interest?**
- * **3. Is there anyway a public interest in disclosing the information?**

Group 3: Exempt or disclose?

- * Look at the following RTI requests, and decide whether or not you can disclose the requested information. Apply the three-part test to determine this.
- * You are a RTIO in the Department of Agriculture. You receive an RTI request asking for details of research being conducted under the department into genetically modified crops. The research is in an experimental stage. What must you consider when making a decision on this?

Group 4

- * You are a RTIO in the Vanuatu Supreme Court. You have been asked to provide information about the shareholdings and other sources of income of a judge, currently overseeing an inquiry into the award of a government contract to a private firm. There is concern that the judge or his close relatives could have shares in the company. What are some points you must consider when making a decision?

Group 1

- * **Does this request relate to one of the defined interest listed in the exemptions sections of the RTI Act?**
- * The RTI Act contains a list of interests which must be protected, and any information disclosure of which would harm those interests – is exempted under the law. ‘National security’ to which this requested information relates, is one of the interests listed in the RTI Act.
- * **Would the disclosure of this information cause substantial harm to that interest?**
- * In this example, yes: the information could be valuable to an enemy – it is very important that it should not be revealed, because it would harm national security.
- * **Is there anyway a public interest in disclosing the information?**
- * Is that the end of the story? No- there is still the possibility of overriding this conclusion if it could be maintained that this was still in the public interest. In this example, it could be argued that, even though an enemy would benefit from learning about the malfunctioning rifles (a harm to national security), there are various other reasons why it would be in the public interest for the information to be disclosed. These reasons could include:
 - * Generating public pressure to have the rifles replaced;
 - * Exposing weaknesses in the procurement system that led to the army buying defective weapons;
 - * Holding incompetent or corrupt officials to account.
- * Hence, in this case , the final decision could be to authorize disclosure of information

Group 2

- * To decide whether this information can be disclosed under the law, you need to apply the exemptions test:
- * **Does this request relate to a defined interest under the RTI Act?**
- * Yes, clearly it does. The information requested is a commercial secret.
- *
- * **Would the disclosure of this information do substantial harm to that interest?**
- * Of course, it is difficult to answer this question without knowing exactly what information would be revealed. But if this technique is so far ahead of the company's competitors, it seems as though revealing it may sacrifice the commercial advantage. So yes, there could be substantial harm.

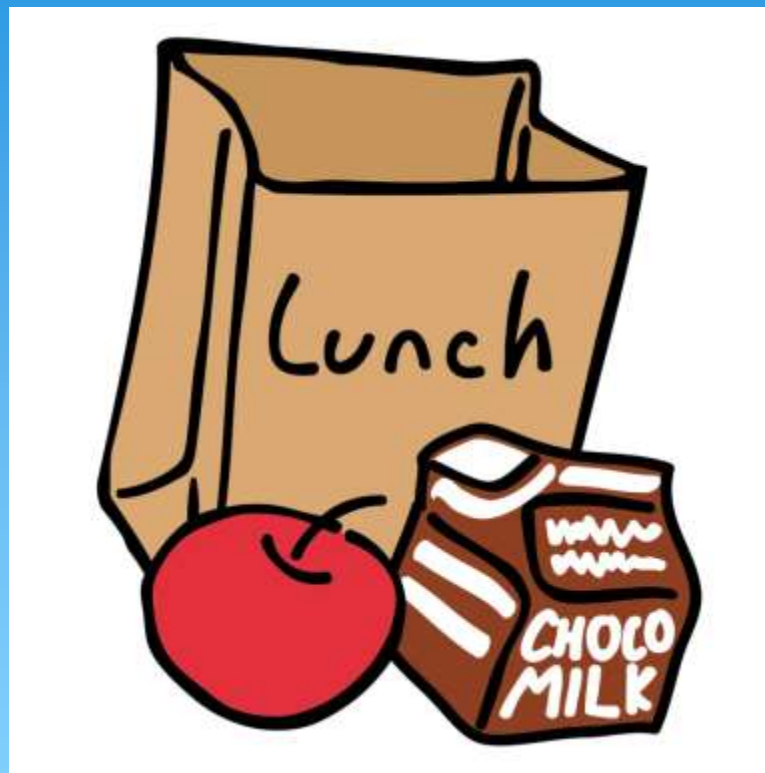
Group 3

- * *You are a RTIO in the Department of Agriculture. You receive an RTI request asking for details of research being conducted under the department into genetically modified crops. The research is in an experimental stage.*
- * **Points to consider:**
- * **GM crops are a very sensitive issue, and one that many people have concerns about – as such there is a strong public interest in disclosing any plans in relation to GM crops;**
- * **The research is at an early stage, and ‘premature’ disclosure of information about this could trigger a backlash (notably from ‘traditional’ farmers) and scupper the research;**
- * **Successful development of GM crops could lead to substantially increased food production in Vanuatu.**

Group 4

- * *You are a RTIO in the Vanuatu Supreme Court. You have been asked to provide information about the shareholdings and other sources of income of a judge, currently overseeing an inquiry into the award of a government contract to a private firm. There is concern that the judge or his close relatives could have shares in the company.*
- *
- * **Points to consider:**
- * **Under normal circumstances, such information would be regarded as ‘private’ (personal) – where someone invests their money is their business and no one else’s;**
- * **In this case, there is a potential conflict of interest between the judge heading an inquiry into potentially criminal behaviour by a firm, and his holding shares in that firm;**
- * **Disclosure of the requested information could help ensure there is no bias towards the company in the inquiry on the part of the judge.**

LUNCH!



HANDLING RTI REQUESTS



HANDLING RTI REQUESTS

Preliminaries



Establish Internal RTI Committee

S. 27 requires the RTI officer to:

*consult with a supervisor or a principal administrative officer before deciding to **defer, partially grant or deny access***

COULD COMPRISE

- * Principal Accounting Officer
 - * RTI Officer
- * Records Manager (if any)

HANDLING RTI REQUESTS

Preliminaries

ATTORNEY GENERAL'S DEPARTMENT

RTI Unit should make arrangements for:

- * stand-by assistance with interpretation & application of exemptions
- * Identify staff attorneys who may be called on for help
- * Inform RTI Officers of entities currently being phased of attorneys' contact information
- *

HANDLING RTI REQUESTS

Preliminaries

RTI Officers/Administrations Association

RTI Unit to lead the formation of a formal association of RTI officers and administrators

PURPOSE

- * Shared learning
 - * Shared experiences
- * Strength in putting forward RTI administration concerns as a body
- * Develop customized body of best practices/learnings that could aid other new RTI officers/recent entities new to RTI administration

HANDLING RTI REQUESTS

Preliminaries

Assistance to the RTI Officer

s. 12 (2)

- * RTI Officer can request the assistance of any person employed at the agency
- * Person is obliged under the Act to provide all reasonable assistance

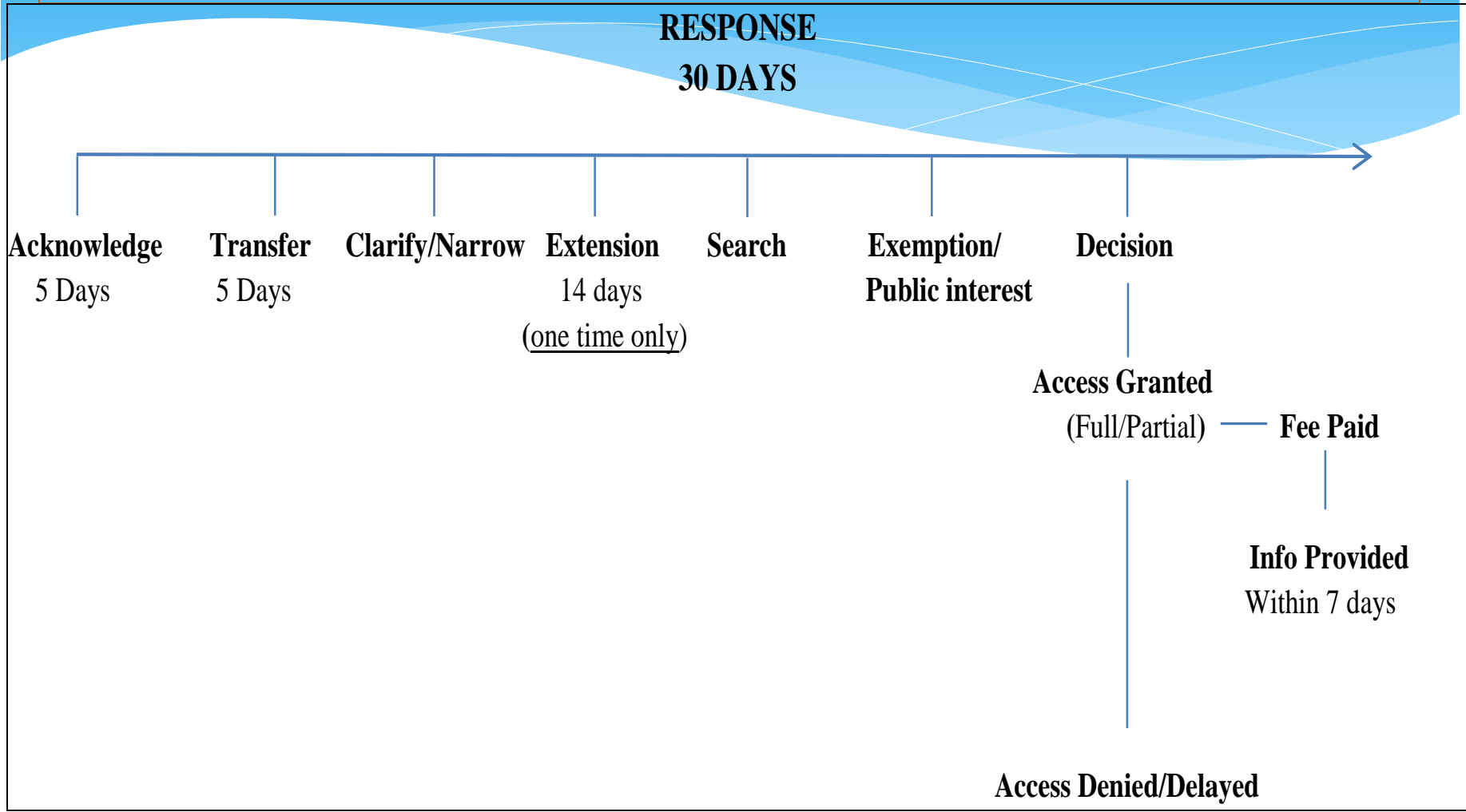
HANDLING RTI REQUESTS

* **THE PROCESS**



HANDLING RTI REQUESTS

Deadlines



HANDLING RTI REQUESTS

APPLICANT

Makes request: s. 13

- * **Written** (letter, email)
 - * **Oral** (telephone)
 - * **In- person**
- * Any of the 3 official languages
 - * *Can use pseudonym**

HANDLING RTI REQUESTS

* **About Pseudonyms & RTI Requests**

Must Use Real Name:

- * for amendment/annotation of personal information
- * If applying as a guardian of third party/next of kin/personal representative of deceased person

What did I just said???

REQUEST

Written Application

Oral Application



S. 13 (5)

- * Reproduce into written form
- * Provide a copy to applicant

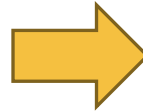
PUBLIC BODY

Acknowledge request:

- within **5 days** of receipt
- state date of receipt
- state responsible RTI officer



Make decision within **30 days**



HANDLING RTI REQUESTS

Transfers s. 21

Transfers s. 21

- * Records requested held by other entity
- * Inform applicant
- * If applicant agrees, transf (within **5 days**) to other entity/RTI officer
- * Notify applicant in writing once transfer done



Notice To Applicant:

- * date of transfer
- * other agency to which it has been transferred;
- * contact info/opening hours/ name & contact info of other RTI officer

* Other RTI officer:



Acknowledge request



Process in **30 days** (from date of transfer).



HANDLING RTI REQUESTS

Multiple Records in a Request

Request Involves Multiple Records/Sources

- * Request seems to ask for a single record, but information contained among a group of records, **it should still considered a request.**
 - * Advise applicant of group of records
 - * *(common sense approach since applicant should be allowed opportunity to consider fee implications should access were to be granted to more documents than anticipated and reproduction is the preferred form of access)*

HANDLING RTI REQUESTS

Clarifying & Narrowing Requests

Clarify Request

- * You are not clear what is being requested
- * *Gain a clear understanding and agreement between RTI Officer and applicant about what applicant really wants.*
- * Makes entire process easier for all concerned in long run.

Narrow Request

- * Reduces breadth/scope of request
- * Decrease number of records requested



HANDLING RTI REQUESTS

Multiple Records in a Request

* **Best Practice Tip**

- * Best if employee most knowledgeable about the requested record(s) communicates directly with the applicant to clarify/narrow the request.
- * While a letter is appropriate in some instances, speaking with an applicant is usually the better way for both parties to quickly explain and answer questions about scope and content of the request.

HANDLING RTI REQUESTS

Extending Response Time

EXTENDING RESPONSE TIME s. 20

If Application involves:

- * a large amount of records
- * such a *large amount of records* that it would *unreasonably interfere* with the entity's activities
- * required consultations would take *a longer time than the 30 day response*

PERIOD OF EXTENSION

Additional 14 days, one time only

HANDLING RTI REQUESTS

Deemed Refusals

NOTE

DEEMED REFUSALS OF ACCESS

S. 25

- * RTI Officer *deemed to have refused an RTI request* if s(he) fails to make a decision within:
 - * Normal Response time of 30 days – 16 (1)
- Or**
- * Period of extension - s. 20

Grounds for Appeal

- * Applicant may appeal this *deemed refusal* to the IC

HANDLING RTI REQUESTS

Repeat Applications

Repeat Applications (s. 26)

RTI Officer may refuse grant of access if satisfied that:

- * Application made by/on behalf of person who previously applied for access to same information;
- * OR
- * application was refused by RTI Officer and IC/Court confirmed the decision

HANDLING RTI REQUESTS

RECAP QUESTIONS

1. An RTI Officer may decide to deny, partially grant or defer an RTI request. What does the RTI Act require him/her to do before taking any of those decisions?
2. What practical step can an agency take to avoid the publication of personal and confidential information?
3. An applicant may choose to use a pseudonym when making an RTI request. Under what circumstances would an applicant's real name be necessary for an RTI request?
4. If you receive *an oral* RTI request, what does the RTI Act require you to do?

HANDLING RTI REQUESTS

RECAP QUESTIONS & ANSWERS

1. An RTI Officer may decide to deny, partially grant or defer an RTI request. What does the RTI Act require him/her to do before taking any of those decisions?

Consult with his/her supervisor or principal admin officer of Gov't agency or relevant private entity

2. What practical step can an agency take to avoid the publication of personal and confidential information?

Conduct early classification of sensitive records or records containing personal/confidential information

3. An applicant may choose to use a pseudonym when making an RTI request. Under what circumstances would an applicant's real name be necessary for an RTI request?

When applying for amendment/annotation of personal information

When applying as a guardian of a 3rd party, next of kin/personal representative of a deceased person

4. If you receive an *oral* RTI request, what does the RTI Act require you to do?

Reproduce into written form & provide a copy to applicant

Coffee!



HANDLING RTI REQUESTS

Finding The Records

What to expect tomorrow!

What kind of information can be access through the RTI Act

FINDING THE RECORDS

REMEMBER!

What you are not required to answer

What you are not required to find out

HANDLING RTI REQUESTS

Finding The Records

The Search

- * **Clarification** - Will you need to clarify the request further? This will determine scope (ex. if the request is for a specific paper record, it may not be necessary to search your email).
- * **Reformulate** – Public bodies are obligated to help applicants reformulate their requests to sufficiently identify the type of records they are seeking.
- * **Search Coordinator** - RTI Officer or a member of his or her department will generally *coordinate* the search.
- * **Involve knowledgeable staff**
- * **Consult other business areas**
- * **Search Records in all formats/medium** (e.g. paper, electronic data, microforms, audio/video)
- * **Consider active, semi-active and inactive records**
- * **Search varied locations** - any location (on-site, off-site, off-line, central storage, staff filing areas, warehouses, Government Records Centre, etc)

HANDLING RTI REQUESTS

Review

S. 31

Review Records for Third Party Information



- * **Personal information** of a third party



- * **Commercial and confidential information** of a third party

HANDLING RTI REQUESTS

Third Party Information

s. 31

If RTI request involves personal/commercial and confidential information of 3rd Party

RTI Officer must:

- * Notify third party **within 14 days** of receipt of the request

Notice to Third Party

- * name of applicant/content of request
- * that personal information is exempt under Act
- * whether public interest override may apply & why
- * that applicant must respond to notice within **14 days** to provide written or oral reasons why request must be refused.

HANDLING RTI REQUESTS

Third Party Information

RTI Officer must next:

- * decide to grant/refuse access whether the third party responds or not;
- * Notify third party of decision within **21 days** of first notice and the right of appeal by applicant to the IC **within 14 days**
- * If access granted, give applicant access after time for appealing to IC (14 days) expires

HANDLING RTI REQUESTS

Exemptions

Review Records for Exempt Material



If Exemption Applies



Deny Request (*apply Public Interest test*)



If Parts Exempt



Partial Grant (*apply public interest test*)



If Exemption Not Applicable

Or

If Exemption Applicable *but Public Interest prevails*



Grant Full Access

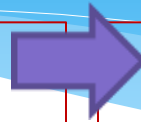
HANDLING RTI REQUESTS

Decision

FULL GRANT

(No Exemptions Apply)

- * Check with IC for any appeals on fee or form of access or from a third party
- * If No, wait for time to appeal to run out
- * If yes, wait for IC decision (in this case, in favor of release)



RESPONSE LETTER

State:

- * reproduction fee payable
- * form of access (as requested or other form)
- * applicant's right of appeal to the IC on amount of fee and form of access.

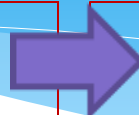
HANDLING RTI REQUESTS

Decision

PARTIAL GRANT

s. 23

**One or More Exemptions
Apply to Part(s) of the
Record**



RESPONSE LETTER

State:

- * Information that is granted
- * Information that is denied
- * That exempt info is deleted
- * Applicant's right of appeal.

HANDLING RTI REQUESTS

Decision

ABOUT PARTIAL GRANTS OF ACCESS

How to delete exempt information

- * photocopy record or portion of it containing the exempt information



- * use black marker to blank out exempt portion from photocopy



- * make another **copy of the photocopy** for release to the applicant



- * Insert exempt section applied in margin adjacent to blacked out areas.

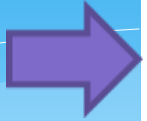
HANDLING RTI REQUESTS

Decision

* DEFERRAL OF ACCESS

s. 22

- * information is a report for tabling in Parliament. Access granted **5 days** after presented and approved by Parliament
- * information is a report prepared for an official/official body. Access granted after report presented/made available to person/body or upon expiration of **45 days** from date of application, whichever is earlier
- * publication of the information within particular period required by law relevant to the Gov't agency/relevant private entity. Access granted after expiration of period
- * premature release of record would be contrary to the public interest. Access granted after occurrence of any event, or expiration of any period after which release would not be contrary to the public interest.



HANDLING RTI REQUESTS

Decision

RESPONSE LETTER

∞ State:

- *Decision taken to defer*
- *Reasons for the deferral*
- *Period of deferment*
- *Applicant's right of appeal to IC*

(within 14 days of RTI Officer's notice)

HANDLING RTI REQUESTS

Response Letter

RESPONSE LETTER CHECKLIST

- | | |
|--|---|
| <ul style="list-style-type: none">- Index of records requested in application- Document number for each record- Description of each record- Indication for each record whether access granted or refused or whether part or parts of the record deleted- For each record or part of a record refused, the provision of the Act under which access is refused | <p>If access is being given in another form than requested by applicant and why</p> <ul style="list-style-type: none">- Fee information- Name and position of the decision-maker- Notice that the applicant may appeal the decision to the IC within 20 days- Notice that applicant's appeal should include: the file number assigned by the government agency, a copy of the decision letter, and a copy of the original request. |
|--|---|

HANDLING RTI REQUESTS

Form of Access s. 28

IN FORM REQUESTED

Copy/inspection at office/arrangements for applicant to hear or view sounds or visual images/in electronic form/ transcripts (print, sound or visual)/inspection of works/samples of materials.

IN ANOTHER FORM

- * If applicant requests a different form of access

OR

If RTI Officer of the view that requested form of access:

- * would unreasonably interfere with entity's operation
- * would be detrimental to the preservation of the information
 - * **involve infringement of copyright**

NOTE:

- * If applicant agrees to other form of access, fee charged must not exceed fee which would have been charged for form previously rejected

HANDLING RTI REQUESTS

Form of Access

s. 28(5)

If RTI Officer is of the view that another form of access is necessary:

- s(he) must offer to assist applicant to identify another form/manner
- reject the RTI request if offer of assistance is refused

s. 28 (7)

PERSONS WITH DISABILITIES

RTI Officer must take reasonable steps to make information readable, viewable or heard by applicant with disability

NOTE:

RE INSPECTION OF RECORDS AT OFFICE

SECURE THE RECORDS

Ensure the record(s) is not defaced, changed, destroyed or stolen as a result of granting access

**Ensure an employee is present when access to the record is provided to the applicant

HANDLING RTI REQUESTS

Decision

ACCESS DENIED

s. 18



RESPONSE LETTER

State:

Exemption (s) Applies



- * The exemption applied and relevant section
- * Reasons for the refusal
- * Applicant's right of appeal to IC/timeframe for appealing

HANDLING RTI REQUESTS

Public Domain Information

S. 82

About Grants of Access & Partial Grants of Access

- * Once access to Information granted, such information is deemed as being **in the public domain**

NOTE

Grants of Access to:

- * personal information of the applicant; or
- * the personal information of applicant's next of kin, or person for whom applicant is the guardian or legal personal representative

do not enter the public domain

HANDLING RTI REQUESTS

ABOUT COPYRIGHT

s. 85

- * **s. 85** - Grant of access not to be construed as authorization/ approval of breach of copyright under Copyright and Related Rights Act
- * Applicant is still bound by copyright

Best Practice Tip

- * stamp the records to reinforce this (for ex. *"Copyright Act Applies to Use and Reproduction"*)

and/or

- * state author's name/other indication of authorship on copies

HANDLING RTI REQUESTS

Fees S. 30

Payable



- * Copies, transcripts etc.
- * **Not to exceed VT 50,000**

REFUNDABLE

- * **All of Fee** – Paid/access not provided in 7 days
- * **None**- If delay due to factors beyond RTI Officer's control

COLLECTION

- * Once applicant informed of grant of access/reproduction costs/how & where to pay.
- * Paid at Gov't cashier in the Dept. of Finance.

Not Payable

- * **Application itself**
- * **Search/examination/deletions**
- * **Copies of personal information to guardian of third party/next of kin/personal representative of deceased person**
- * **reproduction of information which is in the public interest;**
- * **failure to respond within deadlines**

NOTE: No copying until Payment Received

1. Receive Request

- Is the request in writing/does it mention RTI?
- Does it provide sufficient detail to enable identification of the requested record(s)?
- If not, assist applicant to rewrite the request.
- Clarify/Narrow the request as needed
- Date-stamp request/open a file /prepare tracking and recording form.

2. Do the Records Exist?

- Do the records exist? If not, notify the applicant and include right of appeal to the IC
- Can the records be found? If not, notify the applicant and include right of appeal to the IC
- If records are found subsequent to the notice, proceed to process the request immediately

3. Do You have Custody or Control of the Records?

- If not, make reasonable inquiries to determine where to transfer request/make transfer within 5 days of receipt of the request.
- Notify the applicant and include the name of the agency and the RTI Officer
- If unclear where to transfer the request, notify the applicant that the records do not exist at that particular agency and that the applicant can appeal to the IC

4. Locate and Review the Records

- Gather the records and review them.
- Do they contain third party personal information? If so, notify the person
- Is a time extension required? If so, notify the applicant
- Check if any exemptions apply

5. Process the Request

- Retrieve the records.
- Determine what exemptions apply.
- Determine if the public interest override applies.
- Delete exempt content where necessary
- Determine if fees are chargeable.

6. Grant Access

- If access to whole or part of record is granted, determine method of access (copy or original).
- If access is granted, denied or partial, give applicant notice of decision
- If an affected third party is involved, give notice to third party of the grant of access
- Collect fee chargeable, and provide record within 7 days
- Do not grant access until it is confirmed that no appeal is filed by 3rd party

7. Correct Personal Information

- Verify the information to be corrected, correct the information or file a statement of disagreement.
- Notify recent users of the personal information of the correction or statement of disagreement.

8. Complete the File

- Document the request and all actions taken.
- Close the file, unless an appeal is commenced

Amendment/Annotation of Personal Information

s. 34

- * **Who can apply?** Any person can apply in writing to amend his/her personal information
- * **For what?** If information is incomplete, incorrect, out of date or misleading.
- * **How?** Apply in writing

RTI Officer

- * Follow certain steps when deciding, including transferring it if the personal record is held by another agency or entity
- * Notify applicant and other relevant agencies of any amendments to applicant's personal records.

OTHER GROUNDS FOR DENIAL OF ACCESS

1. Form of Access Detrimental s. 28

- * unreasonably interfere with organization's operation
- * detrimental to the preservation of the information
- * involves infringement of copyright of a person other than the entity's

2. Repeat Applications (s. 26)

- * Application made by/on behalf of person who previously applied for access to same information;
- * application was refused and IC/Court confirmed the decision;

3. Information Already in the Public Domain

end

* End of Day 2



End of day 2



Day 3

* Day 3

* Reflection on
applications involving
Third Party

RTI Third Party Scenarios

from
RTI Information Commission

- * Let's use some scenarios on applications relating to Third Party.
- * Examples here are from the Queensland Information Commissioner's Office

Scenario One

John applied to access records of all royalty payments made by Company A.

The Department does not prepare individual reports for each company which pay royalties.

A single royalty report is produced annually, which lists all companies which pays royalties, how much they paid, and what it was for.

You decide to release some of the information about Company A's royalty payments. You also decide you need to consult with them.

Scenario One

Question 1:

Would you send the entire report to Company A?



Yes or No



Scenario One

Question 1:

Would you send the entire report to Company A?

Yes or **No**

Question: 2 *Why?*



Scenario One



Question 1:

Would you send the entire report to Company A?

No

Why?

- * **Not all information is being considered for release as it is not within scope of the application**
- * **Could reveal contrary to public interest/exempt information about the other companies**

Scenario One



Question 2:

Presume you redacted the report before sending. If Company A demanded to see the rest of the report would you give it to them?

Scenario One

Question 2:

Presume you redacted the report before sending. If Company A demanded to see the rest of the report would you give it to them?

No – for the same reasons as the previous question

- * Not all information being considered for release as it is not within scope of the application*
- * Could reveal contrary to public interest/exempt information about the other companies*
- * Company A has no right to view the additional information.*

Scenario One

STRATEGIES FOR MANAGING THESE REQUESTS

- * Explain to the third party at the outset why information has been removed
- * If they insist on seeing the documents discuss with them why this is not possible
- * Ensure the third party understands that you are still seeking their views on the information provided and reiterate the timeframes in which you require a response – *remember you need to take steps that are reasonably practicable to obtain their views...*



Scenario Two

Your agency calls for Expressions of Interest (EOI) from community sporting groups for use of a local sporting facility. The local soccer club is successful.

One of the unsuccessful applicants applies under the RTI Act to access all documents about the successful applicant, including a copy of the soccer club's EOI. The applicant tells you he doesn't mind if you give his identity to anyone you have to consult.

You decide to give access to a number of the documents so you consult with the soccer club.

Scenario Two

The soccer club tells you not to give any of the documents out because:

- It's ridiculous that people should think they can access the soccer club's hard work
- No one should be able to look at it except the soccer club and the Council
- The applicant only wants it so he can copy it next tim
- No one but the agency would be able to understand



Scenario Two

Questions



a) Would you consider these as valid objections to release?

Scenario Two

Questions

a) Would you consider these as valid objections to release?

Yes.

The third party has raised genuine concerns about the release of the documents. While they may not have specifically identified exempt information provisions or listed public interest factors it is important to consider whether their concerns fit under any of those categories.



Scenario Two

Questions

b) Would you give them any weight in your decision?

- * It's ridiculous that people should think they can access the soccer club's hard work – *Cannon (1994) 1 QAR 491 discussed that the investment of time and money is not sufficient indicator that the information has 'commercial value' – would probably afford little weight to arguments.*
- * No one should be able to look at it except the soccer club and the Council
 - * *what confidentiality provisions or assurances were outlined in the tender process (if any)?*
 - * *what information is required to be publicly available?*
 - * *Strong public interest factors for government accountability and transparency for expenditure of government funds*

Scenario Two

Questions (cont.)

b) Would you give them any weight in your decision?

- * The applicant only wants it so he can copy it next time – *this is likely an irrelevant factor that needs to be considered and then disregarded (schedule 4, part 1, section 3 – mischievous conduct by the applicant). However, consider if there are any copyright considerations in terms of forms of access (not a public interest factor)*
- * No one but the agency would be able to understand it – *irrelevant factor which needs to be considered and then disregarded.*

Scenario Three

The Department has decided to ban a breed of imported snake. Anyone who owns one will have to surrender it to be destroyed.



Scenario Three

John applies to access all documents related to the Department's decision.

The scope includes the submissions.

Some of the submissions are from individuals detailing their opinions on, and personal experiences with, the breed, some are from commercial importers and breeders, and one is from People for the Ethical Treatment of Snakes (PETS).



Scenario Three

Questions:

- 1) Presume in its call for submissions that the Department said 'All submissions will be published online.'

Would you need to consult with the submitters?

Scenario Three

Questions:

- 1) Presume in its call for submissions that the Department said 'All submissions will be published online.'

Would you need to consult with the submitters?

No.

The submitters were advised that their submissions would be published online – is not activated because the disclosure would not 'reasonably' be expected to be of concern. Reasonable person test.

Scenario Three

Questions

- 2) What if the Department said ‘some submissions will be published online, subject to deletion of personal information?’
 - a) Would you need to consult with the individuals?

Scenario Three

Questions

- 2) What if the Department said ‘some submissions will be published online, subject to deletion of personal information?’
- a) Would you need to consult with the individuals?

It depends:

- * Were their submissions published?*
- * Are you considering removing personal information and does this then remove the concern?*
- * Do you think there is still concern because it isn't clear which submissions would be published?*

Scenario Three

Questions

- 2) What if the Department said ‘ some submissions will be published online, subject to deletion of personal information?’
 - b) Would you need to consult with the breeders?

Scenario Three

Questions

2) What if the Department said ‘ some submissions will be published online, subject to deletion of personal information?’

b) Would you need to consult with the breeders?

It depends:

- * Were their submissions published?*
- * Are you considering removing personal information and does this then remove the concern?*
- * Do you think there is still concern because it isn't clear which submissions would be published?*

Scenario Three

Questions

- 2) What if the Department said ‘ some submissions will be published online, subject to deletion of personal information?’
- c) Would you need to consult with PETS?

It depends:

- * *Were their submissions published by the Department?*
- * *Did they publish their own submissions?*
- * *Do you think there is still concern because it isn't clear which submissions would be published?*
- * *Do you think such an entity would be as concerned about their submissions being released as an individual?*

Scenario Three

Questions

3) What if the Department's call for submissions was silent about the submissions being published online?

a) Would you need to consult with the individuals?

b) Would you need to consult with the breeders?

c) Would you need to consult with PETS?

It depends.

Scenario Three

Questions

3) What if the Department's call for submissions was silent about the submissions being published online?

a) Would you need to consult with the individuals?

Yes.

b) Would you need to consult with the breeders?

c) Would you need to consult with PETS?

It depends.

Scenario Three

Questions

3) What if the Department's call for submissions was silent about the submissions being published online?

a) Would you need to consult with the individuals?

Yes.

b) Would you need to consult with the breeders?

Yes.

c) Would you need to consult with PETS?

It depends.

Scenario Three

Questions

3) What if the Department's call for submissions was silent about the submissions being published online?

a) Would you need to consult with the individuals?

Yes.

b) Would you need to consult with the breeders?

Yes.

c) Would you need to consult with PETS?

It depends.

- * Were their submissions published by the Department?*
- * Did they publish their own submissions?*
- * Do you think there is still concern because it isn't clear which submissions would be published?*
- * Do you think such an entity would be as concerned about their submissions being released as an individual?*

Scenario Three

Questions

4) If a submitter had published their submission online themselves, would you still need to consult with them?

Scenario Three

Questions

4) If a submitter had published their submission online themselves, would you still need to consult with them?

No. They have made the information publicly available which indicates they would not be concerned about its release.

Scenario Four

You consult with Alec as a third party. You've redacted the document to remove the applicant's personal information and some of Alec's information that you are not going to release.



Alec calls you and demands to see the whole document, without all that information removed. He tells you he can't possibly give you his views until he sees the whole document and he won't be doing so until he receives a copy.

Scenario Four

Questions

- 1) Would you give him an unredacted copy of the document?

Scenario Four

Questions

- 1) Would you give him an unredacted copy of the document?

No.

Scenario Four

Questions

- 1) Would you give him an unredacted copy of the document?

Why???

- * *Not all information being considered for release as it is not within scope of the application*
- * *Would reveal contrary to public interest/exempt information about the applicant*
- * *Not part of the consultation with third party and may cause confusion about what information you are seeking their views on*

Scenario Four

Questions

2) Presume you do **not** give him an unredacted copy and he maintains he will not give his views until you give him one. You remind him twice that he needs to give you his views but he refuses, so you make your decision and release Alec's information.



Scenario Four

Questions

2(a). Do you have to defer access?

No.

Why?

Scenario Four

Questions

2(a). Do you have to defer access?

No.

because

You have taken steps that are reasonable practicable to obtain the third parties views and they have declined to provide you with a response. If you have clearly explained the timeframes you have allowed, provided them with the relevant information for consultation and they do not respond then you can proceed to make your decision. Access is not deferred because your decision is not contrary to their view (because they have not provided any).

Scenario Five

You consult with Eliot as a third party. He demands to know who the applicant is.

QUESTIONS

a) If the applicant is an individual, would you tell him?

Generally not. The privacy principles apply so usually it could only be done with the applicant's consent or if the consultation could not be completed without revealing that applicant's identity.

b) If the applicant is a company, would you tell him?

The privacy principles do not apply to companies. Up to the agency (consider consistency for each application and perhaps developing a policy)

Scenario Six

You call John, the applicant, to let him know the decision due date has changed because you have to consult with a third party. He demands to know the identity of the third party.

QUESTIONS

a) If the third party is an individual, would you tell him?

Generally not.

b) If the third party is a company, would you tell him?

Generally not, but the privacy principles do not apply to companies. Refer to page 56 the OIC's submission to the legislative review for more information

http://www.oic.qld.gov.au/__data/assets/pdf_file/0018/23085/submission-DJAG-review-of-RTI-Act-and-chapter3-IP-Act.pdf

Scenario Seven

The applicant applies for all reports about a company. She is given access to two reports and refused access to one report. She has not been given actual access to any of the documents because access is deferred.



Scenario Seven

Questions

- 1) The company, a consulted third party, applies for an internal review of the decision to release the two reports about their company. You decide to uphold the original decision in its entirety.
 - a) Do you give prescribed written notice to the third party?
Yes. They are the applicant for internal review.
 - b) Do you give prescribed written notice to the applicant?
No, as their decision has not changed. Let them know as a courtesy, though, as the date they can access docs has changed

Scenario Seven

Questions

2) The company, a consulted third party, applies for an internal review of the decision to release the two reports about their company. You decide to alter the original decision and **refuse access** to the two reports.

a) Do you give a prescribed written notice to the third party?

Yes. They are the applicant for the internal review and need to be advised of the decision.

b) Do you give a prescribed written notice to the applicant?

Yes. The decision alters what documents they are being given access to. They will have review rights on the internal review decision.

Scenario Seven

Questions

3) The applicant applies for an internal review of the decision to refuse her access to one report about the company. You change the decision and refuse her access to **all** reports about the company.

a) Do you give a prescribed written notice to the third party?

No. A formal prescribed written notice is not required, however they should be advised as a courtesy that access has now been refused in case they were also going to apply for review.

b) Do you give a prescribed written notice to the applicant?

Yes. The decision is being made on their internal review application and they will have the right to seek external review of the decision.

Certificate presentation





Thank you for listening



Thank you