

Marine Information Bulletin

Issued 19 February 2009, last reviewed 3 September 2009

Right to Information — access to Safety Standards Branch commercial and fishing ship records

Purpose

This bulletin has been raised to notify accredited persons and members of the public of the procedures by which access may be gained to commercial and fishing records under the *Right to Information Act 2009* or through the Business Process Support Section of the Safety Standards Branch of Maritime Safety Queensland.

Right to Information Act 2009

While the Department of Transport and Main Roads provide a wide variety of information to the community about their activities, the *Right to Information Act 2009* provides the public with a legally enforceable right to access documents held by the department.

The objective of the *Right to Information Act 2009* is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.

The *Right to Information Act 2009* allows members of the public to apply for documents of an agency or minister, whether or not that information relates to the personal affairs of the applicant. A document of an agency is defined by section 12 of the *Right to Information Act 2009*.

The term means "a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency, and includes —

- a) a document to which the agency is entitled to access; and
- b) a document in the possession, or under the control, of an officer of the agency in the officer's official capacity."

This would include any document including reports, maps, plans, audio or video recordings and photographs in the possession or under the control of an agency. It is not necessary for the document to have been created by the agency only that it has come into the possession of the agency.

In the *Right to Information Act 2009*, document of a minister under section 13 means "a document, other than a document of an agency or a document to which this Act does not apply, in the possession, or under the control, of the minister that relates to the affairs of an agency, and includes —

- a) a document to which the minister is entitled to access; and
- b) a document in the possession, or under the control, of a member of the staff of, or a consultant to, the minister in the person's capacity as member or consultant."

Anyone may apply for a document under the *Right to Information Act 2009* however there are a number of exemptions and public interest considerations which may apply to some or all of a document.

There are 12 true exemption provisions in the *Right to Information Act 2009* which will deny applicants access to documents. These exemption provisions provide specific classification on identification of material or information that is considered exempt matter. The broad subject of these exemptions is listed below.

Schedule 3 Exempt Information, section 48

- Cabinet matter brought into existence before commencement
- Cabinet information brought into existence on or after commencement
- Executive Council information

- Information briefing incoming Minister
- Information revealing particular sovereign communications
- Information disclosure of which would be contempt of court or Parliament
- Information subject to legal professional privilege
- Information disclosure of which would found action for breach of confidence
- National or state security information
- Law enforcement or public safety information
- Investment incentive scheme information
- Information disclosure of which prohibited by the Act

In addition to the true exemptions, there are factors for deciding the public interest.

Access to a document may be refused to the extent the document comprises of information the disclosure of which would, on balance, be contrary to the public interest.

Schedule 4 Factors for Deciding the Public Interest

- Part 1 Factors irrelevant to deciding the public interest
- Part 2 Factors favouring disclosure in the public interest
- Part 3 Factors favouring nondisclosure in the public interest
- Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure:
 - Part 4.1 Affecting relations with other governments
 - Part 4.2 Affecting investigations by ombudsman or audits by auditor-general
 - Part 4.3 Affecting particular operations of agencies
 - Part 4.4 Disclosing deliberative processes
 - Part 4.5 Disclosing information brought into existence for ensuring security or good order of corrective services facility
 - Part 4.6 Disclosing personal information
 - Part 4.7 Disclosing trade secrets, business affairs or research
 - Part 4.8 Affecting confidential information
 - Part 4.9 Affecting State economy
 - Part 4.10 Affecting financial or property interests of State or agency

The object of the *Right to Information Act 2009* requires the decision-maker to make every effort to provide information to applicants.

The decision-maker must examine each document on the basis that access is always to be given unless it is necessary to protect a vital interest and an exemption provision specifically provides for the exemption of information contained within the document.

In exempting any matter it will be done on a document, paragraph or even sentence basis. That is, exemptions cannot be applied globally over a whole class of documents or an entire file. Each document and each paragraph in that document will be examined to see if it contains matter which needs to be exempted.

If it is possible to delete part of a document without destroying the sense of the document then the *Right to Information Act 2009* requires that the document be released with the exempt matter deleted.

It is understood that accredited entities are expected to ensure that their business dealings with clients remain confidential. Section 48(8) of the *Right to Information Act 2009* protects certain information which is communicated in confidence.

However, it is not enough to mark a document confidential. The substance of the document must be of a truly confidential nature. Whilst matters of commercial confidentiality may be protected by the legislation, it is important to be aware that reports and completed forms lodged with Maritime Safety Queensland are classed as documents in the possession of the agency. Therefore, these documents are subject to the *Right to Information Act 2009*.

The *Right to Information Act 2009* provides protection from defamation for officers who are required to release information under the *Right to Information Act 2009* or who believed that access was required or permitted. In addition, officers and agencies will not be held personally liable for any act or omission done honestly and without negligence in the administration of the *Right to Information Act 2009*.

Right to Information applications

Applications for Department of Transport and Main Roads documents under the *Right to Information Act 2009* are administered by the Right to Information and Privacy Office, Legal and Prosecution Services Branch. Applications can be addressed to —

Manager
Right to Information and Privacy Office
Department of Transport and Main Roads
GPO Box 1549
Brisbane Qld 4001
Telephone: (07) 3306 7108
Fax: (07) 3306 7101
www.qld.gov.au/right-to-information

Alternatively, applications may be submitted online at the Queensland Government website: <https://www.smartservice.qld.gov.au/services/information-requests/home.action>

Maritime Safety Queensland Administrative access applications

Section 19 of the *Right to Information Act 2009* permits an agency, in this case the Business Process Support section of Safety Standards Branch, to make documents available to certain applicants without making a Right to Information request.

The following outlines the scope and nature of documents which may be accessed and by whom an application can be made according to the nature of the documents.

• Scope of documents

The scope of documents which may be made available under these provisions include those documents relating to the operation of commercial and fishing ships and documents supporting applications for authorities under the *Transport Operations (Marine Safety) Act 1994* from ship owners, accredited entities and others.

• Option one — access to current operational documents by current ship's owners including documents relating to the personal affairs of the applicant

Operational documents are those documents which are created in the everyday business of

the ship's operations. These documents include:

- Certificates of Compliance
- explanatory notes
- service certificates for life-raft, fire equipment, compass and so on
- monitoring inspections
- written directions
- correspondence from the owner to Maritime Safety Queensland
- Maritime Safety Queensland correspondence to the owner.

Operational documents do not include any drawings, plans or stability booklets — see below. The ship owner as applicant may obtain access to any current documents provided that the document was originally made available to or by them personally as the recipient or author. All requests are to provide sufficient information concerning the document to enable the document to be identified.

If documents are requested by an agent on behalf of the applicant, generally the ship owner, the application must be made in writing and state:

- the name of the applicant and the name of the agent
- the applicants' address to which the documents are to be sent

Documents may not be sent to agents directly.

If an agent requires documents sent directly to themselves as the applicant, then these documents do not concern the applicant's personal affairs, and are therefore subject to full Right of Information procedures and the associated fees.

Procedure

The applicant makes a request in writing or by phone. A file note will be made by Business Process Support staff for all phone requests. Copies are posted to the owner, that is, the applicant only and not the agent. No charge is applicable.

- **Option two — access to historic operational documents by ship owners and other interested parties, for documents that do not relate to the personal affairs of the applicant**

This includes access to documents relating to a period when the ship was owned by a party other than the applicant or current ship owner, and access to documents where the applicant is not a personal party to the document required. All applications of this nature are to be made through the Right to Information process only using form F2418 and relevant Right to Information fees are applicable.

- **Option three — enquiry to determine if design documents, plans, drawings or stability books are available — request by ship owners, accredited persons and others**

Applicant is to:

- complete a Commercial Vessel Record Search form F1571 requesting specifically the documents that they are searching for, for a particular ship
- pay applicable fees.

A separate form and fee is required for each ship search requested.

Maritime Safety Queensland, Business Process Support will:

- conduct a search of the Commercial Information and Registration Management System and archived plans records
- retrieve archived documents
- prepare a list of documents held
- contact applicant within three days with results
- post list of documents if requested
- include a quote for copying of the documents, if required.

Design documents marked commercial in confidence or trade secret or similar will not be made available without the specific designer or copyright owner's written authorisation.

Maritime Safety Queensland will hold archived documents for a period of one week after contacting the applicant. This will enable the applicant the opportunity to consider whether they will be making an application to view or make copies of documents. After the one week period,

documents will be returned to archives. Once the documents have been returned to archives, applicants will need to conduct a new search, including fees, to retrieve the documents.

- **Option four — viewing design documents, plans, drawings or stability books — request by ship owners or accredited persons only**

Applicant is to:

- first complete a successful search — refer to option three, to determine and retrieve the documents
- make an appointment with Business Process Support section to conduct a viewing (in the presence of an officer from Business Process Support)
- if the applicant is the ship owner the applicant is to provide personal identification which confirms them as being the ship's owner
- if applicant is an accredited person the applicant is to provide a letter of authority from ship's owner which confirms the capacity in which the accredited person is working for the owner and covers the viewing request including the extent of documents being viewed
- if the accredited person is a ship designer and they wish to view design documents prepared by designers other than themselves, they will also need to provide a letter of consent from the relevant copyright holder authorising them to view the designs. This consent letter is to state the documents able to be viewed.

During the document viewing no copies of documents or detailed extracts can be taken, however general notes may be made.

Maritime Safety Queensland, Business Process Support will:

- arrange a viewing appointment within one week
- arrange a conference room for the document viewing
- provide an attendant staff member

Maritime Safety Queensland will hold any archived documents for a period of one week after contacting applicant. This will enable the applicant the opportunity to consider whether they will be making an application for copies of documents. After the one week period, documents will be returned to archives unless arrangements have been made to retain the documents. Once documents are returned to

archives, applicants will need to conduct a new search, including fees, to retrieve the documents.

- **Option five — obtaining copies of design documents, plans, drawings, and so on and or stability books**

Design documents are obtainable from the original designers in many cases. Applicants should also consider this as a viable alternative to Maritime Safety Queensland providing copies.

Design documents marked commercial in confidence or trade secret or similar will not be made available without the specific designer or copyright owner's written authorisation.

Ship owners and accredited persons

The applicant is to:

- first complete a successful search (refer to option three)
- make a written request for copies of specified documents listing all the documents required
- obtain and provide a letter of consent from the relevant copyright holder(s) authorising Maritime Safety Queensland to make, and the applicant to obtain, a copy of the design documents. The authority is to state the documents to be copied
- pay the copy charges — a quote will be provided.

Maritime Safety Queensland, Business Process Support will:

- check the bona fides of the request
- arrange for the copies to be made
- forward copies by express post to the applicant at the address nominated within one week
- return the original documents to archives.

Interstate government departments and maritime agencies

The applicant is to:

- first complete a successful search (refer to option three)
- make a written request for copies of specified documents listing documents required
- provide contact details of the person to whom the documents are to be sent. This information is to include:

- o officer's name
- o officer's contact number
- o officer's postal address
- o pay the copy charges — a quote will be provided.

Maritime Safety Queensland, Business Process Support will:

- check the bona fides of the request
- arrange for the copies to be made
- forward copies by express post to the interstate authority at the address nominated within one week
- return the original documents to archives

Information

For further information about this Marine Information Bulletin, email msqmail@msq.qld.gov.au.

Other Marine Information Bulletins covering various topics relating to the safe operation of ships can be obtained from Maritime Safety Queensland's website www.msq.qld.gov.au and from the following Maritime Safety Queensland regional offices:

Airlie Beach (07) 4946 2200
Bundaberg (07) 4131 8500
Cairns (07) 4052 7400
Gladstone (07) 4973 1200
Hervey Bay (07) 4194 9600
Mackay (07) 4944 3700
Mooloolaba (07) 5477 8425
Pinkenba (07) 3860 3500
Southport (07) 5539 7300
Townsville (07) 4726 3400