

Access to employee records

Policy Number: F3 (QH-POL-095)

Publication date: December 2021

Purpose: To outline procedures for an employee to access employee records.

Application: This policy applies to all employees working for Queensland Health.

This policy does not apply to employees of Queensland Ambulance Service. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure.

Delegation: The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:

- *Crime and Corruption Act 2001*
- *Hospital and Health Boards Act 2011*
- *Human Rights Act 2019*
- *Industrial Relations Act 2016*
- *Information Privacy Act 2009*
- *Public Interest Disclosure Act 2010*
- *Public Records Act 2002*
- *Public Service Act 2008*
- Public Service Regulation 2018
- *Right to Information Act 2009*
- Aboriginal and Torres Strait Islander Health Workforce (Queensland Health) Certified Agreement (No. 1) 2019
- Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No.3) 2019
- Medical Officers (Queensland Health) Certified Agreement (No.5) 2018 (MOCA 5)
- Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 7) 2019
- Queensland Public Health Sector Certified Agreement (No. 10) 2019

Related policy or documents:

- Department of Health Privacy Plan
- Standard – Information access, use and disclosure (QH-IMP-484-2)

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1 Policy

A current employee of Queensland Health is to be provided with access to any employee record which relates to their interests as an employee under an administrative access scheme in accordance with this policy.

This policy incorporates the rights afforded to public service employees under sections 15 to 19 of the Public Service Regulation 2018, and extended to health service employees under section 14 of the Public Service Regulation.

Under the *Human Rights Act 2019*, decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this HR policy, to give proper consideration to human rights.

1.1 Employees eligible to access an employee record

Under this policy, an employee record can be accessed by the following Queensland Health employees:

- A public service employee, which includes:
 - a public service officer
 - a general employee
 - a fixed term temporary employee
 - a casual employee.
 (refer to section 9 of the *Public Service Act 2008*)
- A health service employee, which includes:
 - a tenured health service employee
 - an employee on contract for a fixed term, including a health executive or a senior health service employee
 - a fixed term temporary health service employee
 - a casual health service employee
 - an employee who is a senior health service employee—on contract for an indefinite term.
 (refer to section 67 of the *Hospital and Health Boards Act 2011*)

1.1.1 Meaning of employee record

Each of the following documents, to the extent it contains information about a Queensland Health employee, is an employee record about the employee (refer to section 15 of the Public Service Regulation):

- a report, correspondence item or other document about the employee's work performance, work conduct or work history

- a medical report about the employee
- a written allegation of misconduct by the employee.

Exceptions

None of the following documents is an employee record about a Queensland Health employee (refer to section 15 of the Public Service Regulation):

- a medical report about the employee indicating that disclosure of information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing
- an employee assistance provider document about the employee (refer definitions section)
- a *Public Interest Disclosure Act 2010* document about the employee (refer definitions section)
- a document about the employee relating to suspected corrupt conduct under the *Crime and Corruption Act 2001* or an investigation of the conduct (refer definitions section)
- a document about the employee relating to a suspected criminal offence or an investigation of the offence
- a document that is subject to legal professional privilege.

1.1.2 Possession of employee record

An employee record is in an entity's possession if the entity has the record in its possession, under its control, or is otherwise entitled to have access to the record (refer to section 16(1) of the Public Service Regulation).

An employee record is also in an entity's possession if the record is in the possession, or under the control, of an employee of the entity in the employee's official capacity (refer to section 16(2) of the Public Service Regulation).

In conjunction with the above paragraph:

- If the entity is the Minister, a person is an employee of the entity if the person is an employee of the department administered by the Minister.
- If the entity is the chief executive of a department or HHS, a person is an employee of the entity if the person is an employee of the department, or the HHS.

2 Detrimental employee record

2.1 Detrimental employee record with Queensland Health

If a detrimental employee record about a Queensland Health employee is in the possession of the employee's chief executive and it is intended to be used or placed on the employee's employment file, the chief executive is to ensure that at least 14 days before taking the action:

- the employee is given the opportunity to read the record and to acknowledge having read the record by initialling it
- the employee is given a copy of the record
- if the employee has refused to take the opportunity to read the record or to acknowledge having read the record by initialling it, the refusal is noted on the record
- the employee is given the opportunity to respond in writing at any time to the record's contents
- any written response by the employee is attached to the record.

If the chief executive reasonably considers that giving the employee access to the record, under the access procedure above, would be likely to prejudice an existing relevant investigation or inquiry

(refer definitions section), that access procedure does not apply until whichever of the following periods ends first:

- the period ending when the chief executive no longer reasonably considers that giving the employee access to the record, under the access procedures outlined above, would be likely to prejudice a relevant investigation or inquiry
or
- the end of the period of six months after the detrimental action is taken.

In the above circumstance, the employee is to be notified in writing where there will be a delay in access to the employee's record.

2.1.1 Detrimental employee record with another chief executive

If a detrimental employee record about a Queensland Health employee is in the possession of a chief executive of a department, and the relevant chief executive is not the employee's chief executive, the relevant chief executive is to promptly give possession of the record to the employee's chief executive. However, if the employee has been seconded to another department for a total period of less than 6 months, the relevant chief executive and the employee's chief executive must agree in writing.

The requirement does not apply to a referee's report or other document received for a selection process to fill an employment vacancy in the department.

Example:

A Queensland Health employee worked in another department (Department X) prior to commencing in Queensland Health. The chief executive of Department X is in possession of a detrimental employee record about the employee. The chief executive of Department X is to give possession of the record to the employee's chief executive in Queensland Health.

Example:

A Queensland Health employee has been seconded to another department (Department Y) for less than 6 months. The chief executive of Department Y is in possession of a detrimental employee record about the employee. The chief executive of Department Y and the employee's chief executive in Queensland Health must agree in writing to give possession of the record to the employee's chief executive in Queensland Health.

3 Access to employee record

If an employee record about a Queensland Health employee is in the possession of any chief executive, the employee may, on request:

- inspect the record
or
- take extracts from, or obtain a copy of details in, the record.

The inspection, taking of the extract or copying must be allowed at a time and place convenient to the employing authority or chief executive, no later than 21 days after the request.

If the employee record contains personal information of a person other than the employee, the chief executive may refuse the employee access to all or part of the record for any of the following reasons:

- the chief executive is satisfied the access would be an unreasonable invasion of the privacy of the other person or someone else

- the chief executive is satisfied the access may cause harm to the other person or someone else
- the chief executive is satisfied the access would be contrary to a law
- the chief executive is satisfied the access is likely to be refused if the request for access was an application made by the employee under the *Information Privacy Act 2009* or the *Right to Information Act 2009*
- in other circumstances stated under a relevant directive of the Public Service Commission Chief Executive.

If the chief executive reasonably considers inspection, taking extracts or obtaining a copy of details by the employee would be likely to prejudice an existing relevant investigation or inquiry, the access procedure set out above can occur immediately after whichever of the following periods ends first:

- the period ending when the chief executive no longer reasonably considers inspection, taking extracts or obtaining a copy of details would be likely to prejudice a relevant investigation or inquiry
or
- the end of the period of six months after the employee requests the inspection, extracts or copy.

In obtaining the inspection, extract or copy, the employee is not to remove anything from the record.

3.1 Procedure for seeking access

Applications for access to an employee record are to be made in writing (to enable arrangements to be made) without limiting employee rights to access records under this policy.

For employees of the Department of Health, such applications are to be directed to the Chief Human Resources Officer, Human Resources Branch.

For employees of HHSs, such applications are to be directed, in the first instance, to the local human resources (HR) unit within the particular HHS. When necessary, the local HR unit may refer the application to an appropriate unit where relevant documentation may be held. An acknowledgment of receipt of the employee's application is to be made.

In some instances, not all information can be provided through this administrative process and you may wish to make an access application under the *Information Privacy Act 2009* or the *Right to Information Act 2009*.

For further information, visit <https://www.health.qld.gov.au/system-governance/contact-us/access-info/rti-application>.

If you request access to any documents that do not contain your personal information (e.g. non-personal in nature, or about somebody else), then your application will need to be made under the Right to Information Act. There is an application fee payable and further processing and access charges may also be payable.

Applications requesting access only to documents that contain your personal information are made under the Information Privacy Act. There is no application fee or processing charges, however there may be access charges.

Definitions:

Detrimental employee record	An employee record about a Queensland Health employee that could reasonably be considered to be detrimental to the employee's interests.
Corrupt conduct	Section 15 of the Crime and Corruption Act defines corrupt conduct as conduct of a person, regardless of whether the person holds or held an appointment, that - <ul style="list-style-type: none"> adversely affects, or could adversely affect, directly or indirectly, the performance of functions (official duties) or exercise of power of a unit of public administration or person holding an appointment; <u>and</u> the conduct must be of a kind that could result, directly or indirectly, in the improper performance of those duties in a way that is not honest or impartial, or a knowing or reckless breach of trust, or involves a misuse of information; <u>and</u> must be engaged in for the purpose of providing a benefit, or causing a detriment, to a person; <u>and</u> must be such that it would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.
Employee Assistance Provider (EAP)	A person with a qualification to provide professional counselling services.
Employee Assistance Provider (EAP) document	A document about a Queensland Health employee created by an appropriately qualified person from an employee assistance provider for the primary purpose of providing a professional counselling service to the employee.
Misconduct	Section 187(4) of the Public Service Act defines misconduct as: <ul style="list-style-type: none"> (a) inappropriate or improper conduct in an official capacity or (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.
Personal information	Section 12 of the Information Privacy Act defines personal information as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Public Interest Disclosure Act document	A document that: <ul style="list-style-type: none"> is a public interest disclosure, or record of a public interest disclosure, made under the Public Interest Disclosure Act or was brought into existence for that Act's administration.
Relevant investigation or inquiry	For a Queensland Health employee, it means an investigation or inquiry into: <ul style="list-style-type: none"> an allegation of conduct that, if proved, may make the employee liable to disciplinary action or a grievance involving the employee made under a ruling or industrial determination.

History:

December 2021	<ul style="list-style-type: none"> Policy formatted as part of the HR Policy review Policy amended to:
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	<ul style="list-style-type: none"> - update references and naming conventions - include human rights decision making - outline the provision under the <i>Information Privacy Act 2009</i> and the <i>Right to Information Act 2009</i> - update the corrupt conduct and misconduct definitions and include definition of personal information and public interest disclosure act document.
October 2009	<ul style="list-style-type: none"> • IRM 3.3-2 reformatted as part of the HR policy consolidation project in accordance with EB7.
June 2003	<ul style="list-style-type: none"> • IRM 3.3-2 Access to Employee Record amended.
September 2002	<ul style="list-style-type: none"> • IRM 3.3-2 Access to Employee Record (sections 15-16 <i>Public Service Regulation 1996</i>).

A&TSIHW1, BEMS7, EB10,
 HPDO3 & MOCA5 protected
 Public Sector Act 2022
 applies on 1 March 2023
 Managing the risk of psychosocial hazards at work
 Code of Practice 2022
 applies 1 April 2023