

Information Disclosure under the *Right to Information Act 2009*

Policy and Procedures

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Contact information

Department of Primary Industries, Parks, Water and Environment
GPO Box 44
Hobart TAS 7001

Phone: 1300 368 550

Information@dpiuwe.tas.gov.au

www.dpiuwe.tas.gov.au

DPIPWE's RTI home page

<http://dpiuwe.tas.gov.au/about-the-department/agency-policy-and-plans/right-to-information>

DPIPWE RTI Co-ordinator contact details

Email: right2info@dpiuwe.tas.gov.au

Post: RTI Program Manager, DPIPWE
GPO Box 44
Hobart TAS 7001

Telephone: 03 6165 3160

Facsimile: 03 61730229

Ombudsman' office

http://www.ombudsman.tas.gov.au/right_to_information

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Purpose and Scope

The Policy and Procedures for disclosure of information have been developed for use in the Department of Primary Industries, Parks, Water and Environment (DPIPWE) in response to requests for information in the possession of this Agency.

The Policy and Procedures are also produced in compliance with section 23 of the *Right to Information Act 2009* (the RTI Act)¹ which requires the principal officer of a public authority to develop and publish policies and procedures in relation to disclosure of information under the Act. DPIPWE is a State Service agency within the meaning of the *State Service Act 2000* and is therefore a public authority for the purposes of the RTI Act.²

This document applies to disclosure of information held in records in the possession of DPIPWE under the RTI Act. The provision of verbal information, as well as media statements, is subject to the *Tasmanian Government Communications Policy*, *Whole of Government Media Protocols* and other internal protocols.

Legislative context

The RTI Act

The RTI Act provides to any person a legally enforceable right to be provided with official information in the possession of a public authority or a Minister unless the information is exempt information pursuant to Part 3 of the Act.³

The object of the RTI Act, as set out in section 3 of that Act, is to improve democratic government in Tasmania:

- by increasing the accountability of the executive to the people of Tasmania;
- by increasing the ability of the people of Tasmania to participate in their governance; and
- by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.

The RTI Act identifies four types of disclosure. It encourages openness by making assessed disclosure ‘the method of disclosure of last resort’⁴ and the Principal Officer responsible for instituting adequate processes to ensure that there is appropriate active, routine or required disclosure by the public authority. The RTI Act defines these information disclosures in section 5 as follows:

Type of disclosure	Definition
Active disclosure	<i>A disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than under Division 2 of Part 2 (of the Act – ie an application for assessed disclosure).</i>

¹ The RTI Act commenced on 1 July 2010, replacing the *Freedom of Information Act 1991*.

² Section 5 RTI Act.

³ Section 7 RTI Act.

⁴ See section 12(3) RTI Act.

Assessed disclosure	<i>Disclosure of information by a public authority or a Minister in response to an application in accordance with section 13 (of the Act).</i>
Required disclosure	<i>Disclosure of information by a public authority where the information is required to be published by the Act or any other Act, or where the disclosure is otherwise required by law or enforceable under an agreement.</i>
Routine disclosure	<i>Disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure.</i>

Section 12(1) of the RTI Act states that the ‘Act does not prevent and is not intended to discourage a public authority or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act.’

The processes by which DPIPWE discloses information under the RTI Act are subject to the Manual and guidelines issued by the Ombudsman pursuant to section 49 of the Act.

Associated legislation

A number of other Acts and regulations impact on the administration and operation of the RTI Act, including the:

- *Right to Information Regulations 2010;*
- *Personal Information Protection Act 2004;*
- *State Service Act 2000;*
- *Archives Act 1983;* and
- *Acts Interpretation Act 1931.*

Principles

Implementation of the RTI Act is to be based on a number of principles. All State Service employees (including a Head of Agency) are required to comply with the State Service Code of Conduct⁵ and the State Service Principles⁶ set out in the *State Service Act 2000*. Section 21(2) of the RTI Act also provides that a person who makes a decision in accordance with the Act is to act impartially in making that decision.

The following principles are in addition to these statutory duties and are intended to further guide the Principal Officer, Delegated Officers and other officers and employees of DPIPWE involved in making decisions regarding information disclosure under the RTI Act:

1. DPIPWE will make official information in its possession available to the public when it is relevant, appropriate, in the public interest to do so and not exempt pursuant to the RTI Act.
2. All requests for information will be dealt with professionally and on their own merits.

⁵ Section 9 of the *State Service Act 2000*.

⁶ Section 7(1) of the *State Service Act 2000*.

3. Applications for personal information by an individual to whom the personal information relates will be dealt with in accordance with the *Personal Information Protection Act 2004* in the first instance.

Roles and responsibilities

All officers of DPIPWE have some roles and responsibilities in relation to responding to requests for information under the RTI Act, depending on the type of information disclosure to be employed as follows:

Type of disclosure	Responsibility	Method
Active disclosure	DPIPWE Divisions.	On request and in accordance with this Policy and Procedures.
Assessed disclosure	Principal Officer and Delegated Officers with assistance and support from DPIPWE Divisions.	In accordance with the RTI Act, this Policy and Procedures and the Manual and Guidelines Issued by the Ombudsman.
Required disclosure	DPIPWE Divisions.	As required by statute, law or legal agreement.
Routine disclosure	DPIPWE Divisions.	On DPIPWE website in accordance with internal protocols and this Policy and Procedures.

Section 13(8) of the RTI Act operates to require agencies to assist a person to make an application for assessed disclosure by making available to that person general details of the information in the possession of the Agency.

Information custodians

Divisions, Branches and Sections of DPIPWE are responsible for information management, including the organisation, retrieval, maintenance and disposal of records.

As outlined in the table above, Divisions, as information custodians, have primary roles and responsibilities in relation to active, required and routine disclosures under the RTI Act.

In relation to assessed disclosure, once notified of an application Divisions are responsible for advising as soon as possible if they consider that the request should be refused⁷ or the provision of information deferred⁸, or if the information is otherwise available⁹. If assessed disclosure is to proceed, Divisions are responsible for promptly locating and collating all information relevant to the request and providing that information to Delegated Officers for assessment. Divisions complete a Search Record for recording details of the search undertaken for the relevant information. The record of search may be provided to the applicant on request. It may also become important if the applicant seeks review, as the Ombudsman will need to be satisfied that the search was sufficient and that the decision made

⁷ Pursuant to section 19 or 20 of the RTI Act.

⁸ Pursuant to section 17 of the RTI Act.

⁹ According to section 9 of the RTI Act.

was factually correct (including, for example, where it has been determined that the information requested was not in existence on the day the application was made).

Delegated Officers

Only the Principal Officer and officers duly delegated under the RTI Act (Delegated Officers) are permitted to make decisions in respect of applications for assessed disclosure of information under the RTI Act.

The Principal Officer is specifically vested with functions and powers in the RTI Act. Pursuant to section 24 of the RTI Act the Principal Officer may delegate the performance or exercise of specified functions or powers under the RTI Act to a person that the Principal Officer is satisfied has the skills and knowledge necessary to perform or exercise those functions or powers (Delegated Officers).

Section 50 of the RTI Act makes it an offence for a person to deliberately:

- (1) obstruct or unduly influence a principal officer of a public authority, a Minister, a delegated officer or the Ombudsman and his or her staff in the exercise of the power to make decisions in accordance with the RTI Act; or
- (2) fail to disclose information which is the subject of an application where the information is known to the person to exist, except where non-disclosure is permitted in accordance with the RTI Act or another Act.

Applicants

People who seek assessed disclosure of information in the possession of DPIPWE are responsible for making applications that comply with the RTI Act and RTI Regulations, including payment of any required fee.

The Ombudsman's *Guidelines to assist agencies and applicants in relation to access to information under the Right to Information Act 2009 and the Personal Information Protection Act 2004* (Guideline No. 1/2013) notes that applicants also have responsibilities with regard to:

- understanding the difference between 'information' and 'documents';
- requesting assistance to make an application: section 13(8) of the RTI Act; and
- responding positively to requests to refine applications to make them clear and manageable.

Information disclosures

Required disclosure

Required disclosure is 'disclosure of information by a public authority where the information is required to be published by this or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement' (section 5 of the RTI Act).

The *Right to Information Act 2009 Tasmania Ombudsman's Manual* (July 2010) provides the following categories of information contemplated by the required disclosures provisions of the RTI Act:

- Annual Reports (as required by section 27 of the *Financial Management and Audit Act 1990*);

- Management Plans for national parks, required to be published under section 28 of the *National Parks and Reserves Management Act 2002*;
- information contained in statutory registers to which a right of access is granted by statute (an example being the Register of Titles under section 36 of the *Land Titles Act 1980*); and
- disclosures required by an agreement which is enforceable at law.

The disclosure of information as specifically required by legislation is the responsibility of the relevant member of the Agency Executive or Statutory Office Holder, and in accordance with internal protocols for publication of Agency information.

If a person thinks that the information they require is contained in a statutory register, available by the operation of another Act, required by law or pursuant to a legal agreement they must request the information from the Secretary DPIPWE or from the relevant Division.

Routine disclosure

The RTI Act defines routine disclosure as ‘a disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure’ (section 5).

The Ombudsman’s *Guideline in relation to process of disclosing information under each type of information disclosure* (Guideline No. 3/2010) provides criteria for routine disclosure. Consistent with those criteria, DPIPWE routinely provides the following types of official information online through the DPIPWE website (www.dpipwe.tas.gov.au):

- Organisational information, locations and contacts as well as structural information and annual reports;
- Services provided by DPIPWE;
- Priorities, projects, initiatives, plans, assessments and reviews;
- Decisions, including policy proposals, processes, criteria and consultations;
- Key Policies and procedures;
- Financial information in annual reports; and
- Lists and registers relating to the functions of the Department.

Publication of material is on the basis of approval by the Secretary and in accordance with internal communications protocols. Responsibility for ensuring that information on the DPIPWE website is maintained for accuracy and currency rests with the information custodian in the relevant DPIPWE Division.

Each Division of DPIPWE is required to regularly review information that is published online, or otherwise available, to identify that information which can be routinely disclosed and how and when that disclosure should occur. Key considerations for routine disclosure include:

- The legality or otherwise of disclosure of the information;
- Significance and meaning to the community;
- Expectations of key stakeholders and members of the public;
- The extent of demand for the information;

- Whether publication would improve the ability of the public to contribute to the work or decision making of DPIPWE;
- Whether publication would promote greater accountability by DPIPWE; and
- Whether the information promotes community wellbeing.

Other important considerations to be applied to decisions on routine disclosure include:

- whether the information is official information;
- the resources that would need to be applied in order to routinely disclose the information and whether disclosure is a reasonable use of those resources;
- the accuracy and currency of the information;
- whether disclosure is in the public interest; and
- whether the information is of such a nature that it could potentially be exempt from disclosure under the RTI Act.

Active disclosure

Active disclosure is 'a disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than under Division 2 of Part 2' of the RTI Act (section 5).

The Ombudsman's *Guideline in relation to process of disclosing information under each type of information disclosure* (Guideline No. 3/2010) specifies that any request for the active disclosure of information should be addressed in a timely way, preferably within the timeframe that would apply if the request was an application for assessed disclosure under the RTI Act (which is, in general, 20 working days).

It is the responsibility of DPIPWE Divisions, as the information custodians, to make decisions on active disclosure. The decision on active disclosure will depend on the nature of the information requested and whether any of it is likely to qualify as exempt information if the request was made in an application for assessed disclosure.

If a Division is unable to determine that the information should be actively disclosed, then the person making the request should be advised to submit an assessed disclosure application for the information. Information that typically falls within this category includes, but is not limited to:

1. information acquired from, or about, third party individuals or organisations (such as businesses, not for profit organisations or government agencies);
2. information communicated to DPIPWE in confidence; and
3. internal DPIPWE communications.

Assessed disclosure

The RTI Act (section 5) defines assessed disclosure as 'disclosure of information by a public authority or Minister in response to an application in accordance with section 13'. Assessed disclosure is the method of disclosure of last resort (section 12(3)).

Section 13 of the RTI Act provides:

(1) An application for assessed disclosure of information may be made to any public authority or Minister who the applicant believes has the information.

(2) A person who seeks –

(a) information in the possession of a public authority; or

(b) information in the possession of a Minister –

must make a written application to the public authority or Minister for an assessed disclosure of the information.

(3) An application must contain the minimum information as prescribed in the regulations.

(4) An application for an assessed disclosure of information may be made by reference to the information contained in a particular record or document without specifying the subject matter of that record or document.

(5) A public authority must provide the minimum information as prescribed in the regulations to an applicant about the public authority's assessment procedure for applications for assessed disclosures of information.

(6) If a person –

(a) wants to make an application to a public authority or Minister; or

(b) has made an application that does not comply with this section –

the public authority or Minister must take reasonable steps to assist the person to make an application that complies with this section.

(7) A public authority or a Minister may negotiate with an applicant to refine or redirect his or her application for assessed disclosure of information.

(8) If requested to do so by a person or if it is appropriate to do so to assist a person to make an application for assessed disclosure of information, a public authority must make available to that person general details of the information in the possession of the public authority.

The following section details how DPIPWE deals with assessed disclosure under the RTI Act.

Assessed Disclosure Process

Applications for assessed disclosure

Applications for official information in the possession of DPIPWE may be addressed to:

Right to Information Program Manager

GPO Box 44

Hobart TAS 7001

Phone: 03 6165 3160

Email: right2info@dpiipwe.tas.gov.au

A person who seeks to make an application is encouraged but not obliged to use the standard Tasmanian Government *Application for Assessed Disclosure* form adapted for use by DPIPWE and available from DPIPWE's RTI home page.

To comply with section 13, an application for assessed disclosure must be in writing and contain the following information prescribed in clause 4 of the *Right to Information Regulations 2010*:

- (a) the name of the applicant;
- (b) the address of the applicant;
- (c) the daytime contact details of the applicant;
- (d) the general topic of the application;
- (e) details of the information sought by the applicant;
- (f) details of any efforts undertaken by the applicant, before the application was made, to obtain the information sought;
- (g) the date of the application;
- (h) the signature of the applicant; and
- (i) if the application includes a request for personal information of the applicant, proof of identity of the applicant.

Section 13 of the RTI Act requires a public authority to take reasonable steps to assist a person to make an application for assessed disclosure, including by making available general details of the information in the possession of the public authority if requested by the person or it is appropriate to do so.

Section 16(1) of the RTI Act requires all applications for assessed disclosure to be accompanied by an application fee of 25 fee units¹⁰ unless the applicant qualifies for a waiver of the fee under section 16(2). The Ombudsman's *Guideline in Relation to Charges for Information* discusses the circumstances under which the application fee should be waived or refunded.

Dealing with an application for assessed disclosure

As stated earlier under 'roles and responsibilities', only the Principal Officer and Delegated Officers are permitted to make decisions in respect of applications for assessed disclosure of information under the RTI Act.

¹⁰ For information on the annual indexation of fee units, see <http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/all-s-v/FB5D7C0503A0AC73CA257A2B0000D3D2>.

The process for assessing an application for assessed disclosure is outlined in the RTI Act and in the Manual and guidelines published by the Ombudsman. These documents are available on the Ombudsman's website (www.ombudsman.tas.gov.au).

Statutory timeframes for processing applications for assessed disclosure are set out in the RTI Act. Notably a public authority has:

- up to 10 working days following receipt of an application to negotiate with the applicant, after which the application is taken to be accepted (section 15(2));
- up to 20 working days after an application is accepted to notify an applicant of its decision on an application (s.15(1)); and
- up to 20 additional working days to notify an applicant of its decision if it is required to consult one or more third parties under sections 36 and/or 37 (s. 15(5)).

An application is accepted either on the day that it was received or, by virtue of the operation of section 15(3)(b), on completion of the 10 days allowed for negotiations under section 15(2).

If the subject matter, or part of the subject matter, of an application for assessed disclosure is more closely connected with the functions of another public authority or Minister, the application must be promptly transferred accordingly. DPIPWE will advise the applicant if a transfer of their application is made.

Once an application for information is accepted, the relevant Division(s) is requested to locate and collate the information and provide it for assessment. Divisions are also requested to complete a Search Record¹¹ for recording details of the search undertaken for the relevant information.

All information, whether potentially exempt or not, must be provided to the Delegated Officer who has carriage of the application. Section 50(2) of the RTI Act provides that it is an offence to deliberately fail to disclose information which is the subject of an application for assessed disclosure of information, in the circumstances where the information is known to the person to exist, other than where non-disclosure is permitted in accordance with the RTI Act or another Act.

Assessment and notice of decision

Upon receipt of the relevant information the Delegated Officer will assess whether any exemption in Part 3 of the RTI Act can and should be applied to the information. The assessment also includes whether disclosure of information should more appropriately be deferred pursuant to section 17 ('Deferment of provision of information'); refused under the provisions of sections 19 or 20 ('Requests may be refused if resources unreasonably diverted' or 'Repeat or vexatious applications may be refused'); or not provided to the applicant on the basis of section 9 ('Persons not entitled to apply for certain information already otherwise available').

¹¹ The Search Record used by DPIPWE is adapted from the Ombudsman's *Guideline in Relation to Searching and Locating Information* (No. 4/2010).

In cases where a Delegated Officer has decided that an applicant is not entitled to information because it is exempt information, or the information is deferred (section 17) or refused (section 19 or 20), the applicant must be provided with written notice of that decision (section 22(1)).

Pursuant to section 22(2) of the RTI Act the notice to the applicant must also state the reasons for the decision, state the name and designation of the decision maker and inform the applicant of any rights to apply for a review of the decision. Public interest considerations relied on in making the decision must also be stated in the notice.

The notice of decision provided to the applicant will also contain:

- a quote or accurate paraphrase of the information requested, including any refinements made by negotiation;
- any agreements made between DPIPWE and the applicant as to extensions of time for processing the application;
- relevant sections of the RTI Act or any other Act used in making the decision;
- clear and precise decisions in relation to each item of information, including detail of exemptions applied and public interest considerations taken into account (where relevant) and the weight given to those considerations;
- material or evidence relied on to make the decision;
- findings of material fact that support the decision (including views of third parties where relevant to the exemption);
- an explanation as to material that cannot be disclosed at that stage due to current review rights of third parties;
- review rights and how the applicant can exercise those rights; and
- a 'document decision table' that schedules the information relevant to the request and the decision made in relation to each page of information (where relevant).

Information disclosed to the applicant will be appended to the notice with exempt, out-of-scope and duplicate material redacted. In accordance with section 22(2), each page containing redacted information will be stamped "This copy is not a complete copy of the original record".

Where all of the official information relevant to an application for assessed disclosure is disclosed to an applicant pursuant to an accepted RTI application, a notice under section 22 of the RTI Act is not required. DPIPWE will disclose such information pursuant to section 18(1) of the RTI Act along with a covering letter that includes:

- a quote or accurate paraphrase of the information requested, including any refinements made by negotiation; and
- any agreements made between DPIPWE and the applicant as to extensions of time for processing the application.

Internal review

Section 43 of the RTI Act outlines applicants' rights to apply to the Principal Officer of the Agency for reviews of decisions of Delegated Officers. The right to apply for internal review applies only to decisions that:

1. the applicant is not entitled to information because it is exempt information;
2. provision of the information will be deferred in accordance with section 17; and
3. provision of the information is refused by virtue of section 19 or 20 of the RTI Act.

Third parties also have rights of review and these are detailed in section 43(2) and (3) of the RTI Act.

Decisions on internal review are made by either the Principal Officer or a Delegated Officer (other than the Delegated Officer who made the original decision). The Principal Officer or Delegated Officer will review the decision, make a fresh decision, and provide notice of that decision to the appellant in accordance with the policy and procedures outlined above (assessment and notice of decision).

Appellants who have received a notice of decision on internal review, or who have not received such a notice within 15 working days of their application, are entitled to apply to the Ombudsman for external review in accordance with section 44 of the RTI Act.

Other rights of review for applicants and interested parties are set out in section 45 of the RTI Act.

Publication of Assessed Disclosures

DPIPWE RTI Disclosure Log

Purpose

The purpose of the RTI Disclosure Log is to make available to a wider audience information disclosed to applicants following an application for assessed disclosure. In doing so this reinforces the object of the RTI Act to improve democratic government in Tasmania.

Content

Information that is disclosed to an applicant as an assessed disclosure under the RTI Act, or that is actively disclosed if it is decided that there is no information to assess in the terms of the application, will be published in the DPIPWE RTI Disclosure Log if it is considered to be in the broader public interest to do so.

The RTI Disclosure Log will contain the following information:

1. Category of applicant (Member of Parliament, Media Representative, Private Individual or Organisation);
2. RTI reference number: the number given to every RTI application received by DPIPWE in chronological order per financial year;
3. Summary of Information applied for under the RTI Act. This summary may not necessarily be as provided in the application, but is to be as concise as possible to inform the public of the nature of the information applied for and to provide context to the published information;
4. Pdf documents of the document decision table (if applicable) and information disclosed to the applicant. In some circumstances the information disclosed to the applicant may have further redactions made depending on personal information considerations and whether it is considered to be in the broader public interest for the information to be published. Where this has occurred a note will be made of the further redactions in the document decision table.

- DPIPWE does not disclose or publish blank pages of information – ie where a Delegated Officer has decided that all the information is either exempt, out-of-scope or duplicate material; and
5. An estimate of the associated costs in dealing with the application for assessed disclosure. This estimate is calculated by multiplying the estimated hours of officer time applied to an application once it is received, through to searching, locating and collating relevant information, assessing the information against the provisions of the RTI Act and providing the applicant with a decision on that application.

Information published in the RTI Disclosure Log will be watermarked as follows:

RTI – DL – RELEASE- DPIPWE

Information that will not be published

The RTI Disclosure Log will contain information disclosed to an applicant as an assessed disclosure under the RTI Act unless publication is not considered to be in the broader public interest. In most cases all the information provided to the applicant will be published, but it is important that consideration be given in each case to whether exceptions may apply.

Information that might, in such circumstances, not be published in the RTI Disclosure Log includes:

- Personal information as defined in the RTI Act;
- Information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable;
- Information that is not considered to be in the broader public interest (including information related to current court proceedings or other adjudicative functions);
- Information that it is not reasonably practicable to publish due to the work involved in modifying the information for publication to remove personal information, business and other information and information that is not considered to be in the broader public interest; and
- Information that, if published, would infringe copyright of a third party.

Decision to make information available on the DPIPWE RTI Disclosure Log

The decision to publish information on the DPIPWE RTI Disclosure Log is made by the Deputy Secretary (Corporate, Heritage and Lands).

The decision to publish information in the RTI Disclosure Log is distinct from the decision of a Delegated Officer to decide that an applicant is entitled to information. Applicants and third parties will, however, be notified during the assessed disclosure process that information disclosed under the RTI Act may later be published in the RTI Disclosure Log (subject to certain exceptions).

In making the decision to publish information on the RTI Disclosure Log the Deputy Secretary (Corporate, Heritage and Lands) will consider whether publication is in the broader public interest, including:

1. The reasonableness of publishing information about the business, commercial/financial or professional affairs of any person;
2. The broader public interest in the information; and

3. The reasonable practicality of publishing the information due to the work involved in modifying the material to remove information that the Deputy Secretary (Corporate, Heritage and Lands) has decided should not be published.

Publication on the RTI Disclosure Log

Time of publication

In accordance with the policy of the Tasmanian Government, DPIPWE will publish disclosed information, with or without further redactions, within two working days of the information being disclosed to an applicant in accordance with their application for assessed disclosure.

Publication of additional information following internal or external review

Where an applicant for assessed disclosure is provided with additional information in accordance with a decision made pursuant to section 43 ('Internal review'), section 47 ('Powers of Ombudsman') or section 48 ('Decisions of Ombudsman'), that additional information will be published in the RTI Disclosure Log if it is in the broader public interest to do so.

The decision is made by the Deputy Secretary (Corporate, Heritage and Lands) in the same way, and on the same considerations, as apply to the publication of other information on the RTI Disclosure Log.

Accessibility

The RTI Disclosure Log is on the DPIPWE website (www.dpipwe.tas.gov.au). Information disclosed in the Log is in pdf format only; however, people who have difficulty accessing the information can request a copy of the information in an alternative format by contacting the DPIPWE RTI Program Manager.

Information published in the RTI Disclosure Log will remain accessible via the DPIPWE website for a period of at least two years, after which the documents may be removed. The documents will remain available for as long as is required under the *Archives Act 1983*.