



Managing access to audio visual information under the GIPA Act – guidance for agencies

Fact sheet
November 2017

Agencies are creating and holding an increasing amount of audio visual (AV) material. It is important that agencies recognise that AV information is a form of government information and needs to be managed to facilitate release to the public consistent with obligations under the *Government Information (Public Access) Act 2009* (GIPA Act).

This guidance includes advice and assistance to agencies on:

- issues to consider in providing access to AV information via the GIPA Act
- managing AV information consistent with the *State Records Act 1998* (SRA)¹
- dealing with personal information under the GIPA Act or the *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- examples of good practices in how agencies currently handle the release of AV information
- where to go to get more information.

What is AV information?

AV material can consist of:

- closed circuit TV recordings (CCTV)
- body cameras, dashcams and in-car-video or mobile phones
- other visual recordings or still images (such as of meetings or events)
- audio recordings (such as of '000' calls, Council meetings, consultations or interviews)
- video material such as promotional or marketing material
- drone footage captured for regulatory purposes.

The use of AV information as a descriptor categorises the information by its form of record rather than the method of recording. The AV descriptor recognises the

¹ Administered by State Archives and Records Authority of NSW.

broader spectrum of technology that is used to capture information, rather than the limited definition of CCTV which has a specific meaning. Such information may be created by the agency or received and held by the agency.

AV information and the GIPA Act

General approach

The expression “government information” is given a wide meaning by section 4 of the GIPA Act, which provides that it is “information contained in a record held by an agency.” Clause 10, Schedule 4 of the GIPA Act defines “record” as any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means.

The GIPA Act, including the public interest test, applies to accessing AV information in the same way as, for example, written information. However, making decisions about the release of AV information can pose some particular challenges.

Following good records management practices consistent with the SRA is also important (see box below).

AV information and the State Records Act

AV information held by an agency is a State record and required to be managed in accordance with the SRA, standards issued under the SRA, and the retention and disposal authorities issued by the State Archives and Records Authority of NSW.

Sound record management policies and practices in agencies provide the basis for subsequent disclosure of records and information via GIPA by:

- ensuring the right information is held for the right period
- providing assurance to applicants and the public that information is appropriately available
- making it easier to find/search for information, thus reducing costs to agencies and the public.

The foundation of good records and information management is a robust governance framework that ensures records are:

- routinely created and managed to meet the organisation’s business needs and accountability requirements
- identifiable, retrievable and accessible for as long as they are required (with appropriate metadata)
- access to records and information is managed and provided in accordance with legal and business requirements
- stored appropriately and protected from unauthorised access, destruction, loss, deletion or alteration (security of systems, audit and system logs)
- retained and kept for as long as they are needed to meet business, legal and accountability requirements
- disposed of accountably when legally appropriate to do so and in accordance with legal and business requirements.

Relevant records and information management business rules and processes should be included in Agency Information Guides (section 20 of the GIPA Act) to inform the public’s understanding of the agency’s records and information governance framework.

It is important that agencies ensure that AV information is retained or kept for the appropriate length of time. All agencies need to ensure that they have identified retention requirements for these records consistent with their operational, legal and accountability requirements. This includes in accordance with retention and disposal authorities issued by the State Archives and Records Authority of NSW.

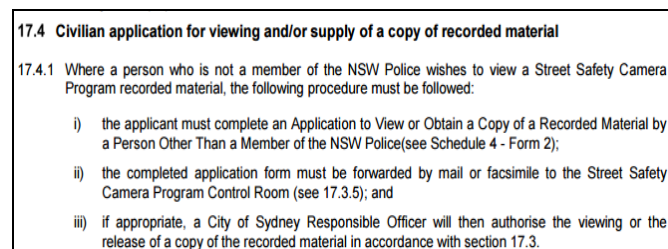
See www.records.nsw.gov.au/recordkeeping/rules for further advice and guidance regarding the management of AV records and the SRA.

If an agency creates or holds a lot of AV information, they should take the necessary steps to make it available to the public. Agencies may also wish to work closely with their Chief Information Officer and/or Chief Information Digital Officer.

It can also help to have a specific statement on how this material can be accessed.

For example, the City of Sydney has a Street Safety Camera Program Code of Practice which describes how the program works and how access is granted (see Figure 1).

Figure 1: Extract of City of Sydney Code of Practice on "Street Safe" Cameras²



Another approach is to include a description of any specific AV access arrangements as part of the agency’s general access to information page or Agency Information Guide.

For example, on its ‘Information Access’ webpage, Transport for NSW provides information to the public on how to access CCTV footage held by the agency (see Figure 2). Of particular note is that the page advises the public that CCTV may be held for only a short time, and that an informal application under the GIPA Act is encouraged.

Figure 2: Extract from Transport for NSW website on how to access CCTV footage held³



AV information and the GIPA Act’s four pathways

The object of the GIPA Act is to open government information, including AV information, to the public. Agencies are able to provide access⁴ via a number of pathways. In each pathway the public interest test in Part 2, Division 2 of the GIPA Act applies. Agencies are authorised to make government information publicly available unless there is an overriding public interest against disclosure of the information.

² http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0011/277193/Policy-Street-Safety-Camera-Program-Code-of-Practice-Jan-2014.pdf

³ <https://www.transport.nsw.gov.au/contact/access-information/cctv-footage>

⁴ Part 2 Division 1 of the GIPA Act, IPC Fact Sheet: [Authorised proactive release of government information](#)

Proactive release – This may include, for example, an agency choosing to release CCTV for public safety reasons or the release of footage for a particular agency event or announcement.

Informal release – agencies are authorised to release government information in response to a request that is not an access application unless there is an overriding public interest against disclosure of the information. This may include release of AV material to a third party or release of AV information to a person who has requested information relating to themselves.

Using this pathway allows agencies to release information subject to any reasonable conditions that the agency thinks fit to impose. However, agencies should recognise and address the risk that the recipient may not comply with conditions, or may inadvertently release un-redacted material. If the main motivation for using this pathway is cost or lack of technological capability, a recent decision by NCAT acknowledges an alternative approach via formal request.

Formal release – a person who makes an access application for government information has a legally enforceable right to be provided access to the information in accordance with Part 4 of the GIPA Act unless there is an overriding public interest against disclosure of the information. This may include release of AV information that concerns a particular function of the agency or a public official.

CASE STUDY: Informal release of audio visual information

If an agency uses the informal pathway in the GIPA Act, it is able to release information subject to reasonable conditions, including redacting or pixelating information before releasing it further. These conditions can be used to enable release when, for example, the agency does not have the resources or technology to redact the information itself.

A government sector agency has used the informal pathway to release CCTV information to media applicants subject to conditions, such as a requirement to pixelate and remove personal information, before publishing the information. Using the informal pathway in this way has facilitated prompt access to the CCTV information at the lowest reasonable cost to the applicant and the agency whilst ensuring personal information remains protected.

Issues to consider in deciding an application for AV information

Communication with the applicant

Agencies are required (section 16) to provide advice and assistance to applicants. This can be important regarding AV information if clarity about the request is needed.

Agencies may need to speak to the applicant about the scope of the information sought at several points during consideration of their request. This can assist if the request appears to seek a large amount of AV information which may be either too large an amount to provide, too expensive, or if part of the footage is irrelevant to the applicant’s request. It is possible that the applicant may be satisfied with a smaller amount of AV information, or for the information to be provided in another form (see forms of access below).

Consideration of personal factors of the application

Under section 55 of the GIPA Act, an agency is entitled to take a number of personal factors of the application into account when deciding whether to provide access to information. These are:

- (a) the applicant’s identity and relationship with any other person,
- (b) the applicant’s motives for making the access application,
- (c) any other factors particular to the applicant.

It can be helpful to consider the reason for the request which might be for research, to support preparation of a civil claim, or to reproduce via media such as television or the internet.

In regard to video of a traffic accident, for example, it will be up to the decision-maker to decide if the public interest in improving road safety alone or with other factors may outweigh the importance of protecting personal information. The decision on whether to release information might therefore vary depending on whether the applicant was a media company wanting to broadcast the footage or a road safety researcher wanting to understand the causes of traffic accidents.

It is also open to agencies to impose the condition on access to medical and psychiatric information so that a medical practitioner nominated by the applicant receives the information, and not the applicant personally (section 73(3) of the GIPA Act).

Considering personal/health information

The disclosure of personal/health information, where the information is about the person to whom it is to be disclosed, is considered a public interest consideration in favour of disclosure. Where the information is the personal/health information of a third party, it is considered a public interest consideration against disclosure.

Personal information is defined in Schedule 4[4] of the GIPA Act as ‘information or an opinion about ... an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.’

If the decision-maker believes that personal information may be revealed in the footage or contravene the PPIP Act or *Health Records and Information Privacy Act 2002*, the decision-maker could consider whether pixilation of that information could sufficiently address those concerns (see section 74 of the GIPA Act relating to deleting information to be accessed).

For further guidance, agencies should refer to IPC [Guideline 4: Personal information as a public interest consideration under the GIPA Act](#).

Consultation⁵

Information proposed for release that contains personal information or information about the person’s business, commercial, professional or financial interests may require an agency to undertake consultation.

Under section 54 of the GIPA Act, an agency must consider whether a person would have concerns about disclosure of the information and whether those concerns are relevant to a public interest consideration against disclosure. Agencies should note that the definition of a person includes an individual, a corporation and a body corporate or politic.

AV information, especially CCTV footage, often captures third parties that are not related to the scope of a request for information. Agencies are able to decide whether it is reasonably practicable to consult with third parties and having agency policies for dealing with these matters will assist in guiding decision making.

For further information, see IPC [Guideline 5: Consultation on public interest considerations under section 54 of the GIPA Act](#).

⁵ IPC [Guideline 5: Consultation on public interest considerations under section 54 of the GIPA Act 2009](#)

CASE STUDY: Consideration of revealing personal information and disclosure of that information: Commissioner of Police, NSW Police Force v Field⁶

Issue: Would personal information revealed in CCTV footage of a public place, which recorded an incident, be taken to be disclosed?

The question is in fact one of “whether access to footage actually taken and in the possession of the government should be permitted, according to the regime laid down in GIPA”.

The Appeal Panel in *Field* found definitions of personal information in the GIPA Act are wide, not defined by reference to matters that have occurred in private, but concerned with information “about an individual”.

When it comes to the question of whether personal information has been revealed, the statutory provisions are concerned with revealing information, not revealing an event to which the information relates. Further, the fact some information about an event is publicly disclosed does not mean other information has been.

Schedule 4[1] to the GIPA Act, to “reveal” information is defined as “to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure)”. Accordingly, if the personal information has already been publicly disclosed in a lawful manner, this consideration against disclosure cannot be relied on.⁷

Forms of access, redaction and deletion of information

Forms of Access

One of the decisions facing agencies can be how to provide access in a way that is suitable to the needs of the applicant and efficient for the agency.

Under section 72 (2) of the GIPA Act, agencies must provide access in the way requested by the applicant unless there are specific reasons not to (set out in that sub-section), or there would be an overriding public interest in disclosure against doing so.

There are different ways of providing access⁸ that may be available to an agency:

- by inspection, e.g. a person may inspect AV information at the agency premises
- providing a copy of a record, e.g. an agency may provide a copy of CCTV on a disc or electronically
- providing the facilities to view a record, e.g. an agency may provide the hardware and software for AV information to be accessed

⁶ [2016] NSWCATAP 59 (8 March 2016)

⁷ See paragraph 3.5 of IPC Guideline 4: Personal information as a public interest consideration under the GIPA Act

⁸ Part 4 Division 6 of the GIPA Act

- a print out of a still image from CCTV footage
- in a written transcript, e.g. an agency may transcribe an audio recording.

The multiple forms of access provide options for agencies to best satisfy the applicants' request.

Where an applicant has requested that the information be provided in a particular way, an agency must provide access in the way requested by the applicant unless it would:

- interfere with agency operations or result in unreasonable additional costs on the agency
- be detrimental to preserving the record properly
- infringe copyright, or
- there is an overriding public interest against disclosure in the way requested by the applicant (see s72(2) of the GIPA Act).

CASE STUDY: The University of Sydney provided access to a still of CCTV footage relating to a university protest which satisfied the applicant's request and protected the privacy of other individuals that may be identified.

Redaction

Often a major consideration in releasing information will be the extent to which it contains personal information of third parties, such as CCTV capturing the images of members of the public.

Under section 74, the agency can delete information from a copy of the record, either because it is not relevant to the application or because the agency has decided not to release the information. Redaction of AV information is therefore often needed. This is of particular importance when considering release of AV information via the formal release pathway as section 73 of the GIPA Act provides that an agency may not impose conditions on the use or disclosure of information released under an access application.

Some considerations are:

- only to remove information that the agency has decided not to release and avoid over-editing the AV information
- ensuring the information is permanently removed, not just masked, as some techniques can be reversed
- the cost of redaction can be significant and should be considered when providing estimates of processing charges or requests for advance deposit (see section below on fees and charges).

Agencies should consider the appropriate technology for redaction of information, how to mitigate the risk of re-identification and, where possible, consider the appropriate technology to facilitate release when the CCTV technology is first acquired (e.g. information access by design).

A range of tools are available to assist with redaction, and right to information officers should seek internal or external advice on techniques. Options might include:

commercial redaction software

'whole of screen' blurring if sufficient information is preserved to meet the applicant's needs

capturing single frames, for example every second, to provide sufficient information and enable easier redaction by, for example, including in a PDF file.

Processing charges⁹

The charge that may be imposed by an agency for dealing with an access application is at a rate of \$30 per hour for each hour of processing time for the application.

This fee is waived for the first 20 hours if the request is for the applicant's own personal information (including where their personal information is included along with others' information).

Agencies have an obligation to deal efficiently with the application and provide access based on the lowest reasonable estimate of time spent in providing access.

The Information Commissioner recommends that agencies communicate with the applicant before they issue their notice of decision, about whether or not it is possible to edit the requested information and if so, any processing charges that may apply.

CASE STUDY: Redaction of Personal Information: Seven Network Limited v South Eastern Sydney Local Health District¹⁰

In reviewing a decision not to release AV information, the Tribunal found that there would be no public interest consideration against release if any identifying information in the video footage was pixelated. The Agency, however, did not have the facility to pixelate the footage itself.

The applicant offered to pay the costs of pixelation by a third party under the direction of the Agency and NCAT decided the agency should release the information in the light of this commitment. This may suggest that an applicant and the Agency might make an agreement concerning the costs of redacting or pixelating AV information.

⁹ Part 4 Division 5 of the GIPA Act

¹⁰ [2017] NSWCATAD 210 (27 June 2017)

Balancing the public interest¹¹

The GIPA Act does not provide a set formula for weighing individual public interest considerations or assessing their comparative weight. These questions may be characterised as questions of fact and degree to which different answers may be given without being wrong, provided that the decision-maker acts in good faith and makes a decision available under the GIPA Act. It is then a matter of placing identified considerations in order of priority or importance.

The decision to disclose government information by the decision-maker attracts protections within the GIPA Act in respect to actions for defamation or breach of confidence, against certain criminal actions and personal liability (sections 113-115 of the GIPA Act). The protection against personal liability extends to an officer of the agency or a person acting on behalf of the agency or an officer (section 115).

Notices of decision

Applicants will have more confidence in decision-making if notices of decision clearly explain the reasons for the decision. It will help applicants understand an agency's decision to give or deny access to information if:

- notices thoroughly address whether the disclosure would reveal individuals' personal information
- it outlines the consultation that has taken place (e.g. with third parties, and if it is not practicable why this is so)
- it clearly explains any particular technological barriers to release, such as whether AV information files are encrypted and therefore cannot readily be edited or pixelated
- it details the searches that were undertaken to locate the requested information.

The IPC has also developed a [template Notice of Decision](#) to assist agencies.

Acknowledgements

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Further information

Information about	Where to go
NSW Government policy on records management	www.records.nsw.gov.au/rules Standard on records management General Retention and Disposal Authority: Video/visual surveillance records (GDA8) General Retention and Disposal Authority: Administrative records (GA28) www.legislation.nsw.gov.au <i>State Records Act 1998</i> <i>State Records Regulation 2015</i> Government Recordkeeping Phone: (02) 8257 2900 govrec@records.nsw.gov.au
NSW guidance on the use of CCTV in public places	NSW Department of Justice Phone: (02) 8688 7777 www.justice.nsw.gov.au NSW Government policy statement and guidelines for the establishment and implementation of CCTV in public places
Particular responsibilities of local councils	Office of Local Government Phone: (02) 4428 4100 www.olg.nsw.gov.au
NSW government policy on ICT	Department of Finance, Services & Innovation Phone: (02) 9372 8877 www.finance.nsw.gov.au
Release of information via GIPA Act or the PPIP Act	Information and Privacy Commission NSW (IPC) Phone: 1800 472 679 ipcinfo@ipc.nsw.gov.au www.ipc.nsw.gov.au

For more information

Contact the Information and Privacy Commission NSW:

- Free call: 1800 472 679
- Email: ipcinfo@ipc.nsw.gov.au
- Website: www.ipc.nsw.gov.au

¹¹ Section 13 of the GIPA Act