



Open access information – agency requirements

Fact sheet
June 2017

This fact sheet provides guidance to assist agencies in meeting their open access information requirements.

Under the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2009* (GIPA Regulation), all NSW agencies are required to make a range of open access information publicly available, unless there is an overriding public interest against disclosure of the information.

Open access information is to be publicly available free of charge on the agency's website (unless to do so would impose unreasonable additional costs on the agency).

The benefit of open access information

The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information sharing practices across NSW agencies. It provides members of the public with an immediate right of access to important government information.

In line with the GIPA Act's objects,¹ mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair and effective.

It does this by placing the onus on agencies to push information into the public domain and subsequently:

- promote open discussion of public affairs, enhancing government accountability and contributing to informed debate on issues of public importance
- inform the public about agency operations and their policies and practices for dealing with members of the public, and
- ensure effective oversight of public funds.

What open access information are agencies required to make publicly available?

The GIPA Act defines open access information as:²

- an agency information guide (AIG), describing an agency's structure, functions, how those functions affect the public, the type of information held and how it is made publicly available³). See IPC [Guideline 6: Agency Information Guides](#).
- documents tabled in Parliament by or on behalf of an agency⁴
- an agency's policy documents that are related to its functions and are likely to affect members of the public such as rules, guidelines, statements of how administered schemes will operate and procedures to investigate contraventions (but are not legislative instruments)⁵
- a disclosure log of information released under formal access applications that may be of general public interest.⁶ See IPC's [Good practice for disclosure logs](#).
- a register of contracts an agency has with private sector entities for \$150,000 or more.⁷ See IPC's e-learning module, [Contract Registers under the GIPA Act](#).
- a record of the open access information that is not made public due to an overriding public interest against disclosure⁸
- an advertising compliance certificate issued by the head of a government agency under the *Government Advertising Act 2011*.⁹

Information about exceptions is provided in the Appendix.

What is not open access information?

Open access information does not apply to certain agency functions.¹⁰ This includes information that is:

- judicial and prosecutorial
- complaints handling and investigative

³ Section 20 of the GIPA Act

⁴ Section 18(b) of the GIPA Act.

⁵ Section 23 of the GIPA Act

⁶ Sections 6, 18, 25, 26 of the GIPA Act

⁷ Section 27 of the GIPA Act

⁸ Section 18(f) of the GIPA Act

⁹ Clause 3(2) of the GIPA Regulation

¹⁰ Schedule 2 of the GIPA Act; Section 19 of the GIPA Act

¹ Section 3 of the GIPA Act

² Section 18 of the GIPA Act

- competitive and market sensitive.

Additional requirements on certain types of agencies under the Regulation

Some types of agencies are required to make additional information available as open access information.¹¹

Agencies should ensure the GIPA Regulation requirements are addressed and the relevant open access information is available on their websites.

Agencies should confirm if they are subject to these requirements by referring to:

- the agency and department definitions in section 3 of the *Annual Reports (Departments) Act 1985* and Schedule 3 of the *Public Finance and Audit Act 1983*
- the IPC's [What is an Agency?](#)

Ministers

Additional open access information of a **minister** may be made available on the website of a department for which the Minister is responsible¹² and includes:¹³

- any media release the Minister issues
- specified details concerning the Minister's overseas travel.

Note: *Ministers and their staff are not required to publish an AIG under the GIPA Act.*

Departments

Additional open access information for **government departments** includes:¹⁴

- a list of the Department's major assets and acquisitions
- the total number and total value of properties the Department disposed of during the previous financial year
- the Department's guarantee of service (if any)
- the Department's code of conduct (if any)
- any standard, code or other publication applied, adopted or incorporated by reference in any Act or statutory rule the Department administers.

Statutory bodies

Additional open access information for **statutory bodies** (within the meaning of the *Annual Reports (Statutory Bodies) Act 1984*) includes:

- the total number and total value of properties the statutory body disposed of during the previous financial year

- the statutory body's guarantee of service (if any).

Councils

Councils have additional open access information requirements.¹⁵ Broadly, the requirements include:

- information about the local authority, such as annual reports (including of bodies exercising functions delegated by the local authority), EEO management plans and any codes referred to in the *Local Government Act 1993*
- information in returns of interests (pecuniary interests) or other returns filed by councillors or staff¹⁶
- agendas and papers of council meetings
- land registers, registers of delegations and current declarations of disclosures of political donations
- plans and policies such as for approvals, management of community land and environmental planning instruments
- information about development applications including associated documents and records of decisions.

The Chief Executive of the Office of Local Government may, in consultation with the Information Commissioner, adopt mandatory provisions for inclusion in the AIG.¹⁷ The AIG of a local authority must include any such mandatory provision unless the Chief Executive otherwise approves in a particular case.

A councillor or a designated person must complete a return disclosing their pecuniary interests.¹⁸

Disclosure of the returns must be provided on the council's website, unless this would impose unreasonable costs or there is an overriding public interest against disclosure.¹⁹

More information about councils is provided in the Appendix.

How should open access information be made available?

All open access information must be available free of charge on an agency's website, unless this would impose unreasonable costs. In this case, at least one alternative method of access must be free of charge. Agencies may charge for open access information only if it is available for free in at least one other format.

Particular arrangements for open access are specified for Ministers and councils.

¹⁵ Clause 3 and Schedule 1 of the GIPA Regulation

¹⁶ Schedule 1 of the GIPA Regulation

¹⁷ Section 20(3) of the GIPA Act

¹⁸ Section 449 of the LG Act

¹⁹ Section 6 of the GIPA Act and Schedule 1, 2(a) of the GIPA Regulation

¹¹ Part 3, clause 5 of the GIPA Regulation

¹² Part 3, clause 8 of the GIPA Regulation

¹³ Part 3, clause 5(1) of the GIPA Regulation

¹⁴ Part 3, clause 5(2) of the GIPA Regulation

Ministers

The open access information of a Minister may be made publicly available on a website maintained by a Government Department for which the Minister is responsible.²⁰

Councils must also make open access information available by:²¹

- making the information available for inspection free of charge by any person at the office of the Council during ordinary office hours, and
- providing a copy of a record containing the information, or the facilities to make a copy of the record, to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.

Councils

A council may archive records that contain open access information in accordance with tier record management practices and procedures, but is required to retrieve archived records and make the information available as soon as reasonably practicable after a request for access is made.²²

Does the public interest test apply to open access information?

Yes. Sometimes an agency may partially or fully withhold open access information due to an overriding public interest against disclosure. In this case, a record of the open access information it does not make publicly available must be published on the agency's website.²³

An agency must facilitate public access to open access information by deleting information from a copy of a record if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure and it is practicable to delete the matter.²⁴

The GIPA Act does not require or permit an agency to make open access information available in any way that would constitute an infringement of copyright.²⁵

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
 Email: ipcinfo@ipc.nsw.gov.au
 Website: www.ipc.nsw.gov.au

Appendix

Exceptions to open access information agencies must make available

The following exceptions apply:²⁶

- Department of State and Regional Development is not required to include any information about or a copy of a government contract if it involves the provision of industry support
- State owned corporations and their subsidiaries are not required to include any information about or a copy of a government contract that relates to activities engaged in by the corporation or subsidiary in a market in which it is in competition with any other person
- Landcom is not required to include any information about or a copy of a government contract for the sale of land.

Additional information for Councils

- Councils should refer to IPC's [Guideline 1: Local Councils on the disclosure of information \(returns disclosing the interest of councilors and designated persons\)](#). The Guideline assists local councils to determine public interest considerations to disclose information and supplements the GIPA Act.
- The IPC has also published [GIPA Guideline 3: For local councils – personal information contained in development applications: What should not be put on council websites](#), as well as resources on copyright and compliance with the GIPA Act to assist councils with meeting their open access information requirements. Councils should refer to IPC's [Copyright and the GIPA Act: Frequently Asked Questions for councils](#).

²⁰ Clause 8 of the GIPA Regulation

²¹ Clause 4 of the GIPA Regulation

²² Clause 4 of the GIPA Regulation

²³ Sections 6(1), 6(5) and 18(f) of the GIPA Act

²⁴ Section 6(4) of the GIPA Act

²⁵ Section 6(6) of the GIPA Act

²⁶ Sections 38 to 40 of the GIPA Act