

# Commissioner's Overview

Underlying the promotion of a more open and effective democratic system is a fundamental shift that recognises that governments serve citizens and the information they collect is a public good to be properly managed and publicly accessed.

## Why is the right to access information important?

The right to access information enables citizens to actively and meaningfully participate in government decision making, the development of policies for the provision of services and the delivery of those services. Importantly, the right to information minimises the risk of corruption and enables citizens to hold governments to account.

Public confidence is essential to effective democracy and transparency is instrumental in promoting public confidence. Consequently, democratic governments promote a presumption in favour of access to information as a means of addressing the information asymmetry that exists between those who govern and the citizens they serve.

The right to access information as a fundamental tenet of democracy received full recognition in 2016 through Australia's submission of an inaugural National Action Plan (NAP) to achieve membership of the multilateral Open Government Partnership (OGP).

The establishment of the OGP as an independent international oversight, reform and resource platform responds to the right to information as an integral component of the right to freedom of expression.<sup>1</sup> Australia has now confirmed that it shares the OGP's commitment to government accountability and responsiveness to citizens.

In 2016 the Information and Privacy Commission (IPC) conducted a community attitudes survey regarding information access rights. The survey found that 89% of respondents believe having the right to access government information is important.

The 2016 survey results aligned with national findings<sup>2</sup> and recognised that increasingly citizens appreciate this right and acknowledge the strategic value of government information.

<sup>1</sup> Article 19, Universal Declaration of Human Rights; Resolution 59 UN General Assembly

<sup>2</sup> <http://www.pc.gov.au/inquiries/current/data-access/draft/data-access-draft.pdf>

Open Data is one of the strategic information assets managed by government and the survey included a particular focus on community attitudes to Open Data.

83% of respondents agreed that de-identified information should be used to inform the planning and delivery of government services. Additionally, 78% agreed that the data should be used to develop government agencies' policies and consult with the public.

This significant level of citizen support provides confidence in governments enabling information access. The *Government Information (Public Access) Act 2009* (GIPA Act) enshrines the right to access information and this significant, legislated commitment by the NSW Parliament must be reported upon annually.

## How is the GIPA Act working? Significant trends and analysis 2015/16

The IPC's strategic regulatory approach facilitates the provision of unique and informed insights into the operation of the GIPA Act.

### 'Push' pathways:

- Pleasingly, within the government sector, the compliance rate for mandatory proactive release of information has increased to 89%, compared with 83% in 2014/15.
- There has been a consistent decline in the number of agency reviews of proactive release programs, from 85% in 2012/13 to 71% in 2015/16. This compliance rate is lower than any other measure of mandatory compliance across all four information access pathways.

Current trends indicate that:

- The proactive release of information is improving. However, at a more granular level, compliance with mandatory requirements for publication of contracts and Agency Information Guides (AIGs) by government agencies is low.<sup>3</sup>
- A continued focus is required to elevate compliance with contract reporting requirements. These requirements are proportionate to the significant expenditure of government funds through contractual arrangements. The GIPA Act facilitates access by citizens to information

<sup>3</sup> [http://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/IPC\\_Report\\_Towards\\_a\\_NSW\\_Charter\\_for%20Public\\_Participation\\_FINAL.pdf](http://www.ipc.nsw.gov.au/sites/default/files/file_manager/IPC_Report_Towards_a_NSW_Charter_for%20Public_Participation_FINAL.pdf)  
[http://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/IPC\\_Report\\_universities\\_compliance\\_GIPA\\_August\\_2015\\_ACC.pdf](http://www.ipc.nsw.gov.au/sites/default/files/file_manager/IPC_Report_universities_compliance_GIPA_August_2015_ACC.pdf)  
<https://www.audit.nsw.gov.au/publications/latest-reports/special-report-agency-compliance-gipa-act>



held by contractors performing government services.<sup>4</sup> Significantly, these mandatory legislative requirements provide visibility and certainty notwithstanding significant change across all sectors, including the proportion of contingent labour operating within the public sector.<sup>5</sup>

The contemporary 'push' model mandated under the GIPA Act provides a platform to actively and efficiently respond to the exercise of citizens' rights and their information access needs. These pathways require a greater focus by agencies.

#### 'Pull' pathways:

- In 2015/16 there was a 14% increase in the number of applications.
- The overall information release rate in response to applications remained steady compared to 2014/15, at 68%, and represents a halt of the two year decline in the overall release rates.
- There was a 20% difference between the highest releases rates, 71% for applications by members of the public, private sector business, and the lowest release rate, 51% for not-for-profit organisations or community groups.
- The most significant increase in applicant type was Members of Parliament, from a small base of 147 in 2014/15 to 414 in 2015/16.
- The increase from 91% to 93% in compliance with statutory timeframes is commendable in the context of a significant increase in applications.
- Both review rates at 6% and review outcomes remain consistent with agencies reporting that, overall, 54% of reviews upheld the original decision.
- Reviews by the Information Commissioner now represent 47% of all reviews conducted.

## What will be done to improve information access?

The data and trends confirmed in this report have enabled identification of strategic approaches and operational measures to authoritatively lead improved operation of current information access rights. In this context, continuing support to progress the statutory review of the GIPA Act will remain a priority.

Agencies and the Information Commissioner are required to assist citizens making applications. The IPC will build upon its successful case management tool and examine opportunities for digitisation of the GIPA application process.

The IPC will target operational and cultural factors impeding compliance with the push pathways intended to stimulate the ongoing, effective release of government-held information.

Building a culture of accountability has been identified as a factor to drive the progress of reform in the NSW public sector<sup>6</sup> and the IPC is uniquely placed to collaborate in promoting this culture.

Increasing the amount of accessible government data improves transparency and accountability, supports evidence-based policy development and provides a platform for innovation. Following the publication of research into the most effective means of activating Open Government,<sup>7</sup> the IPC has commissioned further research to identify international legal, policy and regulatory settings that enable Open Data and promote a culture of data sharing. My work as Open Data Advocate will continue to promote responsible stewardship and data accessibility.

As a result of leading the states and territory contribution to Australia's inaugural NAP, we are well placed to evaluate the effectiveness of the operation of information access laws throughout Australia in a contemporary context through a consistent set of measures that align with established international indicators.<sup>8</sup>

From this vantage point we can identify optimal information access regimes and their operation in practice. This work will be augmented by the initiative I led in 2016 to develop a compendium of all state and territory information access legislative regimes. Accordingly, the legislative arrangements and the outcomes of those arrangements can be scrutinised through a consistent lens with the aim of ensuring that citizens and governments realise the benefits of an effective and contemporary model of Open Government.

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4 S121 GIPA Act 2009

5 <https://www.psc.nsw.gov.au/reports---data/state-of-the-sector/state-of-the-sector-2016>

6 <https://www.psc.nsw.gov.au/reports---data/state-of-the-sector/state-of-the-sector-2016>

7 [http://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/REPORT\\_Advancing\\_the\\_objects\\_%20of\\_the\\_GIPA\\_Act\\_2015.pdf](http://www.ipc.nsw.gov.au/sites/default/files/file_manager/REPORT_Advancing_the_objects_%20of_the_GIPA_Act_2015.pdf)

8 World Justice Project Open Government Index