

Being investigated by the Information and Privacy Commission NSW (IPC)

The Information Commissioner has powers under Part 3 of the *Government Information (Information Commissioner) Act 2009* (GIIC Act) to conduct investigations into how agencies fulfill their functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

What is the IPC's role in conducting investigations?

The Information and Privacy Commission NSW (IPC) conducts investigations on the Information Commissioner's behalf.

We will initiate investigations ourselves, as well as in response to matters raised with us by others, including by referral from other agencies.

In undertaking an investigation, we have the necessary powers to obtain information, enter premises and interview people.

When does the IPC conduct investigations?

The purpose of an investigation is to gather facts and report where we are satisfied that there are grounds to believe that agencies are not complying with their obligations under the GIPA Act and/or that the systems, policies and processes are not adequate to fulfill the agencies' obligations under the GIPA Act. An investigation can offer advice and assistance to help agencies comply with their obligations and promote good practice.

The IPC has established its Regulatory Framework which provides further information on the IPC's approach to its compliance activities including investigations. The IPC Regulatory Framework is available [here](#).

What can I expect as part of this investigation?

We take an informal approach. Our aim will be to conduct a thorough, expeditious and fair investigation.

Under section 15 of the GIIC Act the Information Commissioner is to act in an informal manner and according to the substantial merits of the case without undue regard to technicalities. The Commissioner may also determine the procedures to be followed in an investigation based on the circumstances of each individual case. In an investigation the Information Commissioner is not bound by the rules of evidence and may inform herself on any matter in any way that the Commissioner considers to be just.

If we decide to record our discussions or interview with you, and that recording is then transcribed, you can ask for a copy. If you request a copy, one will be provided as soon as a possible after the interview.

Can I bring a support person to an interview?

The Information Commissioner will consider any request for a support person. The role of the support person is to provide support to you. They cannot answer questions on your behalf or influence the response to any questions asked.

Do I have to participate in an investigation?

Yes. You may be asked to provide all information that you know about the subject of the investigation.

You may be asked questions about specific matters or for the purposes of clarifying information you may have already provided to the investigator.

Under section 25 of the GIIC Act, we may ask you to provide a statement of information or to produce records relevant to the matter under investigation. You may also be asked to provide us with a copy of any record. You will also have the opportunity to make a statement about the matter under investigation.

The Information Commissioner has the power to enter and inspect, at any time, any premises you occupy or use, and inspect most records or anything on the premises.¹

Do I have to answer the questions asked or provide access to the information requested?

You must answer all questions truthfully and not mislead the investigator.

You must provide all information requested.

You will be committing an offence under section 43 of the GIPC Act if you:

- obstruct or hinder the Commissioner;
- refuse or wilfully fail to comply with any lawful requirement of the Commissioner; or wilfully make a false statement or attempt to mislead the Commissioner.

Are there offences under the GIPA Act?

Yes. The GIPA Act places obligations on agencies within NSW for publication and release of the information that they create and hold. The GIPA Act also provides rights for persons to apply for access to this government information.

The GIPA Act identifies five specific offences where a person may take actions, often in response to an access application, that are contrary to the object of the GIPA Act.

Each offence carries a penalty of 100 penalty units, which as at November 2019 is equivalent to \$11,000.

A person who alleges an offence has occurred may make a complaint to the Information Commissioner.

The Information Commissioner has, under the GIPC Act, a distinct role when receiving complaints about the conduct of an agency in the exercise of functions under the GIPA Act.

The Information Commissioner may make preliminary inquiries including seeking further information from the complainant for the purposes of deciding how to deal with the complaint. These inquiries may provide further evidence in relation to the allegation that an offence has occurred.

If the Information Commissioner decides to investigate the complaint under section 22 of the GIPC Act, then

the process involves formal notification to both the complainant and the agency.

Information about the offences under the GIPA Act is available [here](#).

What can I expect at the end of the investigation?

Once we have completed our investigation, we will assess the relevant facts, reach a conclusion based on the available evidence, and determine a suitable response in accordance with our legislation and the principles of procedural fairness.

If we anticipate making an unfavourable comment about an agency in any way, we will provide an opportunity to consider and comment on that matter before finalising the investigation.

If we decide to investigate and report on the functions of your agency, section 21 of the GIPC Act says that we must give the report to the Minister responsible for the agency, and to your principal officer.

Additionally, if an adverse comment is going to be made about an agency, the Commissioner must inform the Minister responsible for the agency and must, if requested, consult the Minister. The Information Commissioner must also inform the principal officer of the Agency.²

The Information Commissioner may, following an investigation, request that the agency notify the Commissioner of any action taken or proposed in relation to the investigation report.³

If the circumstances warrant, the Commissioner may at any time make a special report on any matter relating to the functions of the Commissioner to the Presiding Officers of Parliament. The Commissioner may include in such a report a recommendation that it be made public immediately.

We generally publish investigation reports on our website.

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

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

¹ Section 26 GIPC Act
² Section 24(1) GIPC Act

³ Section 24(3) GIPC Act