

Good practice for disclosure logs

Section 25 of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) requires agencies to keep a disclosure log as part of their mandatory open access information.

The disclosure log publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public.

Each NSW government agency must publish a disclosure log on its website.¹ Section 26 of the GIPA Act requires agencies to record the following information about each access application in the disclosure log:

- (a) the date the application was decided
- (b) a description of the information to which access was provided in response to the application, and
- (c) a statement as to whether the agency intends to make the information available to other members of the public and, if so, how it can be accessed.

Agencies may proactively publish additional information in the disclosure log if they consider it to be in the public interest to do so.² However, disclosure logs are not required to record:

- (a) personal information about the applicant or any other individual, or
- (b) Any factors particular to the applicant that were considered by the agency when deciding the application.³

What is the purpose of a disclosure log?

The disclosure log makes information that has already been publicly released in response to an access application available to other members of the public, if the agency considers the information to be of wider public interest. An agency's disclosure log therefore facilitates open access to government information of

public significance and relevance to the NSW community.

Benefits of an accurate and current disclosure log

The disclosure log supports the objective of the GIPA Act by giving members of the public open access to government information where it is in the public interest.⁴ Putting this information in the public domain also helps promote open government and transparency around government decision-making.

Some benefits of an agency listing details of an access application in its disclosure log are:

- it indicates to the agency the type of information that it should consider releasing proactively,
- it shows members of the public what type of information has already been released by the agency and what may be publicly available, and
- it removes the need for agencies to process multiple applications for access to the same information.

Must all information released under an access application be included in a disclosure log?

No. While the GIPA Act encourages agencies to make available as much government information as possible, information need only be included in the disclosure log if it is considered to be of interest to other members of the public.⁵

After releasing information in response to an access application, agencies should consider whether the information would be of interest to other members of the public. Subject to any objection to inclusion of the information in the disclosure log, the information should be released if there is a public interest in doing so and there is no overriding public interest against disclosure.

¹ GIPA Act section 25

² GIPA Act section 7

³ GIPA Act section 26(3)

⁴ GIPA Act section 3

⁵ GIPA Act section 25

Disclosure logs and personal information

Generally, agencies should not include personal information about the applicant or a third party in their disclosure logs as there is unlikely to be a broader public interest in releasing this information. In this regard, agencies should also keep in mind their obligations under the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

Where information released subject to an access application contains information that is personal to an individual applicant or third party, but also other information with a broader public interest, agencies can remove the personal information to facilitate inclusion of the other information in the disclosure log.⁶

Example

An applicant seeks information concerning tonsillectomies done at her local public hospital, including waiting times, surgeries cancelled, etc, because her daughter needs to have surgery. The applicant provides medical evidence of her daughter's medical condition because she thinks this will support her access application.

The agency grants the request in full, and decides to include the general information about waiting times and surgeries in its disclosure log. It does not publish any personal or health information relating to the applicant or her daughter.

Notifying people of intention to include information in disclosure log

If an agency intends to publish information in its disclosure log, it must notify:

- the access applicant
- any other person with whom the agency has consulted (or is required to consult) under section 54 of the GIPA Act.

These people have a right to object to the information being included in the disclosure log.

They are referred to as 'authorised objectors'. Agencies need to consider any objections that an authorised objector makes to the inclusion of the information in the disclosure log when deciding whether to include it.⁷

When an agency acknowledges receipt of an access application, it must inform the applicant that:

- information concerning the application is likely to be included in the agency's disclosure log and that the applicant can object to this, and
- the applicant has a right to request a review of the agency's decision to include information in its disclosure log despite the applicant's objection.⁸

An agency does not have to notify the applicant of this if the agency considers it unlikely that information about the application will be included in the disclosure log.

Where an agency considers that information about a person consulted under section 54 of the GIPA Act is likely to be included in its disclosure log, the agency must give written notice to that person advising that:

- information about them or their interests will be included in the disclosure log
- the person can object to this, and
- the person will have a right of review under Part 5 of the GIPA Act if the agency decides to include information in its disclosure log despite the objection.⁹

The agency should issue such a notice as soon as possible after deciding to include information about a consulted party in its disclosure log.

What can a person object to?

An authorised objector can object to the inclusion of all or some of the information in the agency's disclosure log. The objection can be made as part of the application or separately and can include reasons for the objection.¹⁰

An authorised objector is **only** entitled to object to the inclusion of information in a disclosure log where:

- the information includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative), and/or
- the information concerns the authorised objector's business, commercial, professional or financial interests, and/or

⁶ GIPA Act section 74

⁷ GIPA Act section 56

⁸ GIPA Act 56(3)

⁹ GIPA Act section 54(2A)

¹⁰ GIPA Act section 56(1A)

- the information concerns research or the compilation or analysis of statistics that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector, and/or
- the information concerns the affairs of a government of the Commonwealth or another state (and the authorised objector is that government).¹¹

What happens if there is an objection?

If an authorised objector has objected to the inclusion of information in the agency's disclosure log, the agency must decide:

- whether the authorised objector is entitled to object, and
- (if the agency has decided that the authorised objector is entitled to object) whether the objection outweighs the general public interest in including the information in its disclosure log.¹²

If the objector is the access applicant, the agency's decision on these matters should be included in the agency's notice of decision on the access application.¹³ A notice of decision must be provided to the applicant within 20 working days of receipt of the access application.¹⁴

If the objector is a third party consulted under section 54 of the GIPA Act, the agency must provide this notice within 5 working days after making a decision on the access application.¹⁵ The IPC recommends that this notice be included in the notice of decision provided to the party consulted under section 54. Accordingly, such notice of decision and the notice of the agency's decision to include or not include the information in the agency's disclosure log should be issued within 5 working days of the date the access decision is made.

Review rights

An agency's decision to include information in its disclosure log despite an objection by an authorised objector is a reviewable decision under section 80(m) of the GIPA Act.

An authorised objector has three review options:

- internal review by the agency
- external review by the Information Commissioner, and

- external review by the NSW Civil and Administrative Tribunal (NCAT).

An authorised objector cannot apply for a review by the Information Commissioner if the decision has not first been internally reviewed, unless the objector is the access applicant or internal review is not available.¹⁶

Where an authorised objector has sought a review of a decision to include information in a disclosure log despite an objection, the burden of establishing whether the objections outweighs the public interest to have the information included in the disclosure log lies with the authorised objector.¹⁷

For more information about review rights, see [IPC Fact Sheet: Your Review Rights](#).

What format should a disclosure log take?

The GIPA Act does not prescribe a format for disclosure logs, apart from the requirement to include the date the application was decided, a description of the information and an indication of if, and how, the information is available.¹⁸

Ideally a disclosure log should:

- provide a link for people to access the information online; or
- include a statement explaining how the information can alternatively be accessed.

If information released in response to an access application is available online via the disclosure log, agencies have an ongoing responsibility to ensure that the links to electronic information are not broken and are in working order.

When should information be published on a disclosure log?

Under section 26(2) of the GIPA Act, no details are to be recorded in the disclosure log until the access application is decided.

¹¹ GIPA Act section 56(2)

¹² GIPA Act section 56(3)

¹³ GIPA Act section 56(4)

¹⁴ GIPA Act section 57

¹⁵ GIPA Act section 56(4A)

¹⁶ GIPA Act section 89

¹⁷ GIPA Act sections 97 and 105

¹⁸ GIPA Act section 26

If an objection is made before the access application is decided, under section 56 of the GIPA Act, and the agency decides that the authorised objector was not entitled to object to the inclusion of the information in the disclosure log, the agency can include the information as soon as the access application is decided.¹⁹

However, if a valid objection is made, the agency must not include the information in its disclosure log until the objector's review rights, or any other review rights in relation to the access application, have been exhausted.²⁰

How long should disclosure log information be made available for?

The GIPA Act does not specify how long an agency must make information in the disclosure log publicly available for.

Agencies should keep information in the disclosure log current and up-to-date.

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.

¹⁹ GIPA Act section 56(5)

²⁰ GIPA Act section 56(6)