

Automated decision-making, digital government and preserving information access rights

This fact sheet provides guidance to agencies on the release of information in relation to the use of automated decision-making (ADM) systems.

It is essential that agencies consider their obligations under the *Government Information (Public Access) Act 2009* (GIPA Act) when developing or applying new technologies and using data to inform decision-making.

The object of the GIPA Act is to open government information to the public to maintain and advance a system of responsible and representative democratic government.

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

These rights remain applicable where government uses technology to provide services and inform decisions.

What is automated decision-making?

An ADM system describes a computerised process that either assists or replaces the judgement of human decision-makers.¹

In March 2024, the NSW Ombudsman tabled a [Report on the use of automated decision-making including artificial intelligence \(AI\) in the NSW public sector](#).

The Report notes that in 2023, 275 public sector agencies reported using ADM systems, 198 of which were reported within the state Government sector, and 77 within the Council sector.

This technology can perform many functions that previously could only be done by humans. As these systems are adopted by governments, the community

will increasingly be subject to actions and decisions taken by, or with the assistance of, ADM systems.

To fully exercise their rights, it is important that individuals and other community stakeholders are able to access information on how a decision is made and what information was used to reach that decision. Automating systems can assist decision-making in a number of ways.

For example, they can:

- make the decision
- recommend a decision to the decision-maker
- guide a user through relevant facts, legislation and policy, closing off irrelevant paths as they go
- have capabilities as decision-support systems, providing useful commentary for the decision-maker at relevant points in the decision-making process
- be used as a self-assessment tool, providing preliminary assessments for individuals or internal decision-makers.²

What are the agency's obligations?

Relevant to digital government, agencies have obligations under the GIPA Act to:

- provide advice and assistance to citizens seeking information³
- ensure that any documents that are likely to affect rights, privileges, benefits, obligations, penalties or any other entitlement or liability that affects citizens are disclosed as open access information⁴

¹ Commonwealth Ombudsman, [Automated Decision making: Better Practice Guide](#), 2019

² Dominique Hogan-Doran SC. "Computer says "no": automation, algorithms and artificial intelligence in Government decision-making", *The Judicial Review* (2017) 13

³ GIPA Act section 16

⁴ GIPA Act section 23

- ensure that a description of the ways in which functions, including decision-making functions are exercised are available as open access information⁵
- proactively identify the kinds of information (including data) held and describe how that information can be accessed⁶
- ensure that government contracts provide an immediate right of access to information held by the third-party contractor.⁷

Agency information guides should detail the above information where it is connected to their use of ADM.

How can agencies preserve the right to information in a digital government environment?

As government increasingly adopts digital technology it has a duty to implement administrative practices that safeguard the legislated commitment to open government and the fundamental right of access to information.

In summary agencies are advised to ask three fundamental questions when developing digital solutions:

- Who holds the information?
- In what form is it held?
- How will access be provided?

Digital government necessitates adapting existing practices to the digital environment to future proof the right to access information.⁸

Measures to preserve the right to access information and complement increasing reliance upon digital and other forms of service delivery by government include:

- Elevating procurement standards and contractual arrangements to meet the requirements of s121 of the GIPA Act⁹
- Identifying datasets and other forms of digital information in Agency Information Guides in accordance with section 20 of the GIPA Act

- Including inventories of machine enhanced decision-making systems in Agency Information Guides in accordance with section 20 of the GIPA Act
- Ensuring that documents/information that supports digital government and automated decision-making has been developed to assist agencies exercise their functions that affect members of the public are available as open access information in accordance with section 23 of the GIPA Act
- Responding to formal and informal access applications in a comprehensive manner that takes into consideration information used to develop and support digital solutions including algorithms, source codes, test suites, data sets and variables¹⁰
- Conducting searches in a comprehensive manner that may involve backend and metadata searches using information technology expertise
- Providing certification and attestation in relation to information access searches particularly where specialist expertise is required.

Agencies should review their practices to ensure they are adapting to digital government.

How can agencies meet their obligations to assist members of the public access digital information?

Agency websites are the portal through which information can be accessed and in delivering digital government data and digital information increases rapidly. To be effective in providing advice and assistance agencies need to provide:

- advice about the different ways information is held and can be accessed such as websites, data sets and inventories of machine enhanced decision-making
- an explanation about how to obtain information using the four access pathways under the GIPA Act

⁵ GIPA Act section 20(1)(b)

⁶ GIPA Act section 20(1)

⁷ GIPA Act section 121

⁸ For more information see the [IPC's Fact Sheet: Digital records and the GIPA Act](#)

⁹ For more information see the [IPC's Fact Sheet: Guide to section 121 of the GIPA Act for agencies](#)

¹⁰ See *O'Brien v Secretary, Department Communities and Justice* [2022] NSWCATAD 100 in which the Tribunal considered whether the respondent had an immediate right to access the algorithm, software specification, source code and test suites pertaining to the calculation of private rental subsidies, which were developed by a contractor.

- where relevant, transferring the request to a different agency that holds the information.

The NSW Government has also developed an approach to supporting the safe and responsible use of AI in the public sector. The [NSW AI Assessment Framework](#) (AIAF) has been established to guide public sector agencies through the ethical development, deployment and use of AI technologies. The Framework promotes responsible AI use through requiring the application of principles of fairness, privacy, security, transparency, and accountability.

This self-assessment framework is intended for use when designing, developing, deploying, procuring or using systems that contain AI components. During this self-assessment process, agencies should also consider how the introduction of AI and ADM impacts their obligations under the GIPA Act.

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.

