

Open access obligations on parent agencies under the GIPA Act

Under the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2018* (GIPA Regulation), parent agencies are obliged to publish and keep up to date the open access information of their subsidiary agencies.

Agencies are required to proactively release certain government information as open access information.¹ This requirement is also reflected in the object of the GIPA Act which is to maintain and advance a system of responsible and representative democratic government that is open, accountable, fair, and effective, by authorising and encouraging the proactive public release of government information by agencies².

What are parent and subsidiary agencies?

An agency is defined in the GIPA Act³ as a:

- (a) Public Service agency
- (b) Minister (including a person employed by a Minister under Part 2 of the *Members of Parliament Staff Act 2013*)
- (c) public authority
- (d) public office
- (e) local authority
- (f) court
- (g) person or entity that is an agency pursuant to regulations made under Clause 5 of Schedule 4 of the GIPA Act.

The GIPA Act authorises the regulations to declare a specified agency (the subsidiary agency) is to be a part of and included in another specified agency (the parent agency)⁴. The GIPA Regulation sets out an

extensive list of parent agencies and subsidiary agencies⁵.

The list of parent agencies predominantly consists of Public Service agencies, such as government departments, as well as several public offices and public authorities. Subsidiary agencies that are declared to be a part of these parent agencies include specified advisory committees, trusts, panels, boards, courts, and tribunals.

For more information the IPC has published the following [Fact Sheet - What is an agency?](#)

Parent agency obligations

A parent agency must comply with obligations under the GIPA Act on behalf of its subsidiary agencies:

- If an access application is made to a parent agency specifically for government information held by the subsidiary agency, the application can be dealt with by the parent agency. The access application is to be dealt with as an application only for government information held by the subsidiary and not for government information otherwise held by the parent agency⁶.
- Parent agencies are obliged to publish open access information as though the subsidiary agency is a part of the parent agency unless there is an overriding public interest against disclosure of the information.

What types of information should parent agencies publish?

To comply with their open access obligations, parent agencies need to ensure that the open access information of their subsidiary agencies is published⁷. A parent agency is not required to publish separate open access information for each subsidiary agency that they are responsible for (although in some instances they may choose to), rather they can include

¹ GIPA Act, section 6

² GIPA Act, section 3(1)(a)

³ GIPA Act, section 4(1)

⁴ GIPA Act, Schedule 4, clause 6

⁵ GIPA Regulation, Schedule 3

⁶ GIPA Act, Schedule 4, clause 6(2)

⁷ GIPA Act, section 18

a subsidiary agency's information within the parent agency's open access information.

The GIPA Act requires the following information to be published about a subsidiary agency:

- An agency information guide (AIG), describing the subsidiary agency's structure, functions, how their functions affect the public, the type of information held and how it is made publicly available as it relates to the subsidiary agency⁸.
- See the Information and Privacy Commission's (IPC) [Information Access Guideline 6 – Agency Information Guides](#)
- documents tabled in Parliament by or on behalf of an agency.⁹
- policy documents that are related to the subsidiary agency's 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.¹⁰
- a disclosure log of information released under formal access applications, including as to applications made to or for information of the subsidiary agency that may be of general public interest¹¹. See IPC's [Good practice for disclosure logs](#)
- a register of contracts a subsidiary agency has with private sector entities for \$150,000 (inclusive of GST) or more.¹² See the IPC's e-learning module, [Contract Registers under the GIPA Act](#)
- a record of the open access information held by the subsidiary that is not made public due to an overriding public interest against disclosure.¹³

The GIPA Regulations specify other categories of open access information that apply to particular agencies¹⁴.

For further information on agencies open access requirements see: [Fact Sheet - Open Access Information for Agencies](#)

Can subsidiary agencies publish open access information?

Subsidiary agencies are able to publish open access information independently of the parent agency. If a subsidiary agency publishes open access information independently of the centralised practices of the parent agency, this can satisfy the open access obligations applying to the parent agency for the subsidiary agency.

For example, if a subsidiary agency wishes to publish its own AIG or policy documents independently of the parent agency, this would cause the parent agency to meet its open access obligations relevant to that specific subsidiary agency. However, the subsidiary agency's AIG would not satisfy the wider open access obligations of the parent agency as a whole, beyond any obligations relevant to the subsidiary agency.

Practical steps to ensure information is accurate and up-to-date

Due to machinery of government and other legislative changes the names and relationships between parent and subsidiary agencies may change over time. Where this occurs, interpretative provisions apply, and former agencies are considered to be successor agencies for the purposes of the GIPA Act¹⁵.

Parent agencies should take steps to ensure that they are aware of which subsidiary agencies they are responsible for, and likewise, subsidiary agencies should be aware of which parent agency they are a subsidiary of under the GIPA Act. To help to ensure that relevant information remains accurate and up-to-date as it concerns parent and subsidiary agencies, parent and subsidiary agencies should:

- Maintain an up-to-date list of the parent and subsidiary agencies to which they are related.
- Monitor for any changes to their parent/subsidiary agency relationships, particularly following machinery of government changes in which government agencies are likely to be renamed/dissolved/created.
- Ensure that there are procedures in place to facilitate the publication of open access information and that these procedures are reviewed at regular intervals in particular Agency Information Guides.¹⁶

⁸ GIPA Act, section 20

⁹ GIPA Act, section 18(b)

¹⁰ GIPA Act, section 23

¹¹ GIPA Act, sections 6, 18, 25-26

¹² GIPA Act, section 27

¹³ GIPA Act, section 18(f)

¹⁴ GIPA Regulation, clause 6

¹⁵ GIPA Act, Schedule 4, clause 14

¹⁶ GIPA Act, section 21

- Undertake regular reviews/audits of the open access information that is available on parent and subsidiary agency websites to ensure that all required information is available to the public.

Other useful resources

Other resources that may be useful on this topic include:

- [Fact Sheet - Open Access Information for Agencies](#)
- [Fact Sheet - What is an agency?](#)
- [Information Access Guideline 6 – Agency Information Guides](#)

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.