

# Pathway 1: Mandatory proactive release of information

Since 2010/11, the IPC has conducted an annual desktop audit of agency compliance with mandatory proactive release requirements under the GIPA Act (also known as Open Access information).

In 2021/22, the IPC conducted a desktop audit of the nine principal departments and a sample of 20 smaller agencies. The desktop audit identified whether, in compliance with the GIPA Act, each department or sampled smaller agency published on its website:

- an Agency Information Guide (AIG)
- agency policy documents
- an agency disclosure log
- an agency contracts register.

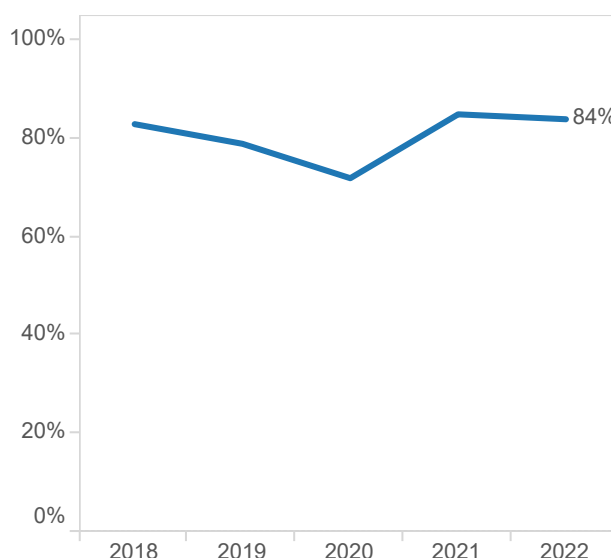
The desktop audit does not examine the comprehensiveness of the information made available, such as whether an agency has published all its policy documents or whether the information is up to date.

## Compliance with Open Access requirements is stable

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements remained stable this year at 84% consistent with 85% in 2020/21 (Figure 1).

As explained below, Government departments are responsible for this outcome and they are commended for their focus on mandatory Open Access requirements.

**Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements, 2017/18 to 2021/22**



The desktop audit also showed the following:

- 86% of sampled agencies had an AIG, consistent with 86% in 2020/21 and 90% in 2019/20
- 90% of sampled agencies had policy documents available, consistent with 90% in 2020/21 and 90% in 2019/20
- 86% of sampled agencies had a disclosure log, consistent with 86% in 2020/21 and an increase from 76% in 2019/20
- 79% of sampled agencies had a contract register, consistent with 79% in 2020/21 and an increase from 69% in 2019/20.

Consistent with 2020/21 results, compliance by departments was significantly higher at 100% than the rate for all agencies.

Agencies, other than departments, had a significantly lower overall compliance rate of 78%. This is consistent with the 2020/21 results (79%) for sampled agencies.

The lower compliance by other, often smaller agencies, will continue to be considered by the IPC when developing future regulatory priorities and resources. Significantly, the IPC has examined Open Access information within the Council sector and provided a [report](#).

## Compliance with additional Open Access requirements for departments continues to remain low

The nine principal departments are subject to several additional requirements for Open Access as set out in clause 6(2) of the GIPA Regulation. These are to make available:

- (a) *a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year*
- (b) *the total number and total value of properties disposed of by the Department during the previous financial year*
- (c) *the Department's guarantee of service (if any)*
- (d) *the Department's code of conduct (if any)*
- (e) *any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.*

The IPC conducted a desktop audit of compliance by principal departments with these five additional Open Access requirements. The audit found that compliance with these additional requirements remains low.

The following results of compliance varied depending on the requirement:

- 11% (one department) fully met and 89% (eight departments) only partially met the requirement in relation to major assets and acquisitions. This is a significant increase from the 22% that partially met requirements in 2020/21.<sup>20</sup>
- 22% (two departments) fully met and 67% (six departments) only partially met the requirement in relation to both the total number and the total value of properties the department disposed of during the previous financial year, with this being a significant increase on the 33% that partially met requirements in 2020/21.<sup>21</sup>

- 33% (three departments) had the department's guarantee of service. This is an increase from 22% (two departments) in 2020/21.
- 100% had the department's code of conduct, which is a moderate increase from 89% in 2020/21.
- 100% had a number of documents/webpages marked as "standard" or "code" available on the website, consistent with 100% in 2020/21.

Compliance with the first three of these five additional Open Access requirements continues to remain low, with departments either failing to publish the required Open Access information in full on their website or providing it via alternative mechanisms. For example, publication of Open Access information in the department's annual report rather than directly to the department's website.

This result demonstrates a need to continue to promote the checklist [Open Access information under the GIPA Act – agency requirements](#) to inform agencies and departments about Open Access information required to be released and assist them to identify their responsibilities for mandatory proactive release.

This low compliance rate with additional Open Access requirements by departments has been included in the IPC's work program. As explained in the Issue Highlight box below, an audit of compliance was commenced in 2022 with the results to be published in 2023.

## Complaints to the IPC about mandatory proactive release

Complaints to the IPC continue to identify concerns regarding compliance with the mandatory requirements for proactive release of information.

In 2021/22, 31% of complaints finalised by the IPC were about Open Access information, a moderate increase from 20.5% reported in 2020/21. As in previous years, Open Access-related complaints mainly concerned agencies not making Open Access information available.

In the Council sector, Open Access issues interact with other legislative requirements, such as the *Environment Planning and Assessment Act 1979* (NSW) and *Copyright Act 1968* (Cth). Wherever possible, the IPC engages with the agencies that are the subject of a complaint to address the compliance issues relevant to the mandatory proactive release of information requirements. This provides an effective approach to enhancing knowledge of the requirements and objects of the GIPA Act.

<sup>20</sup> To fully comply with this requirement, a list of major assets, appropriately classified and with major acquisitions highlighted, must be easily found on the department's website. Partial compliance refers to where a complete list of assets is available but only in the annual report (and not published on the department's website), or where an incomplete list is available either on the website or in the annual report but the assets are either not appropriately classified or major acquisitions are not highlighted.

<sup>21</sup> To fully comply with this requirement, the total number and total value of properties disposed of by the department during the previous financial year must be easily found on the department's website. Partial compliance refers to where both the total number and the total value of properties disposed of is only available in the annual report (and not published on the department's website) or where only some of the required information is available (that is, only the total number of properties disposed of, or only their total value), either on the website or in the annual report.

To assist councils with meeting their obligations under the mandatory proactive release provisions, the IPC published [Information Access Guideline 1 – For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information \(Public Access\) Act 2009 \(NSW\)](#).

### Case Study: Disclosure logs – supporting integrity and transparent decision-making

The GIPA Act requires that open access information must be made publicly available unless there is an overriding public interest against disclosure of the information. Open access information is to be made available free of charge on a website maintained by an agency (unless to do so would impose unreasonable costs on the agency) and can be made publicly available in other ways determined appropriate by the agency.

An agency disclosure log under section 25 is one of the requirements of mandatory open access<sup>22</sup> required to be made publicly available. The disclosure log is a record an agency must keep that records information about access applications made to the agency that the agency decides by deciding to provide access (to some or all of the information applied for) if the information is information that the agency considers may be of interest to other members of the public. Information required to be included is:

- The date the application was decided
- A description of the information to which access was provided in response to the application
- A statement as to whether any of the information is now available from the agency to other members of the public and (if it is) how it can be accessed.

A disclosure log makes information that has already been publicly released in response to an access application available to other members of the public. It facilitates open access to government information of public significance and relevance to the NSW Community. Disclosure logs:

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

The timely updating of disclosure logs is necessary to achieve the intent and responsibilities of the GIPA Act and in the proactive release of information. Although the GIPA Act does not prescribe a timeframe for including material in the disclosure log, agencies should have policies and procedures to update their disclosure log so that it is current and up to date.

Disclosure logs support the objective of the GIPA Act by giving members of the public open access to government information where it is in the public interest. Putting this information in the public domain also helps promote open government and transparency around government decision-making and enables citizens to self-serve.

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<sup>22</sup> Section 18 GIPA Act

## Issue Highlight: Major Public Assets – what are they, how much are they worth and who holds them on your behalf?

The NSW Government holds, manages and disposes of public assets on behalf of the NSW public. What are these assets and how are citizens informed about how they are managed on their behalf?

Major assets can range from sporting facilities, buildings, transport to health infrastructure. It is vital that citizens have access to information about these assets for reasons including:

- the promotion of open discussion about public affairs, enhancing government accountability and contributing to informed debate on issues of public importance;
- ensuring effective oversight of public funds; and
- preventing fraud and corruption.

We all have a fundamental human right to access information.<sup>23</sup> In NSW, the GIPA Act enshrines this right and provides that some government information must be proactively released.

Reporting on major assets must be provided by Government Departments. The GIPA Regulations require agencies to publish each year:

- a list of a Government Department's major assets – appropriately classified and highlighting major acquisitions during the previous financial year; and
- the total number and value of properties disposed of by each Department during the previous financial year.

Consistent with the object of the GIPA Act, the mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair and effective.

In the 21<sup>st</sup> century the public sector is characterised by an increasingly commercial environment and interface with industry. In this context, the mandatory proactive disclosure requirements serve a pro-integrity purpose that equips agencies to prevent and, where identified, combat corruption. These requirements serve the interests of both citizens and agencies. Government departments have a significant integrity role in their acquisition and disposal of major assets which supports the delivery of government services to the community.

Yet year-on-year compliance with these obligations by Government Departments has been low.<sup>24</sup> The absence of action by departments in response to this protracted and prevalent non-compliance necessitated a commitment to the future application of compliance resources by the IPC. An audit of compliance was commenced in 2022 with the results to be published in 2023. The Information Commissioner is committed to assisting departments to fulfil their responsibilities.

Action to achieve compliance and elevate transparency, accountability and public trust is required by the departments subject to this audit.

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<sup>23</sup> Universal Declaration of Human Rights Art. 19

<sup>24</sup> Report on the Operation of the *Government Information (Public Access) Act* 2019/20 and 2020/21