Fact Sheet

November 2026

What is the public interest test?

Who is this information for?

For public sector agency staff applying the public interest test under the *Government Information (Public Access) Act 2009*.

Why is this information important?

This Fact Sheet helps you to understand the balancing exercise that is involved in applying the public interest considerations for and against disclosure of government information.

Relevant legislation

This Fact Sheet is based on the following legislative provisions:

Government Information (Public Access) Act 2009 (GIPA Act) pt 2, pt 4 div 3

Overview

Under the GIPA Act, all government agencies must disclose or release information unless there is an overriding public interest against disclosure.

Fundamental to the obligation to release information is the overarching presumption *in favour of* disclosure of information: s 5. This is the starting point for all decisions regarding information access by mandatory proactive release, authorised proactive release, informal release and in response to formal access applications.

If your decision in relation to withholding any government information is challenged, the onus will be on you to demonstrate that you have consciously considered the various public interest considerations in favour of, and against, disclosure and conducted the balancing test under s 13.

This Fact Sheet works through the public interest test and the steps you should take in applying it.

Applying the public interest test

The public interest test requires balancing factors for and against disclosure of each piece of government information: s 13. That balancing must be undertaken within the context of the general public interest in favour of disclosure of government information and to further the object of the Act to facilitate and encourage, promptly and at the lowest reasonable cost access to government information: ss 3(2), 12(1).

The public interest test requires you to identify the relevant public interest considerations *in favour* of disclosure and the relevant public interest considerations *against* disclosure. Then you need to determine the weight of the public interest considerations on both sides and come to a conclusion about whether the factors in favour of disclosure outweigh the factors against disclosure – taking into account the presumption in favour of disclosure): *Amos v Central Coast Council* [2019] NSWCATAD 226, [20].

How do I identify the relevant public interest considerations *in favour of* disclosure?

The GIPA Act provides examples of factors *in favour* of disclosure that you *may* consider: s 12. It is an inclusive, not an exhaustive list:

- promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance
- informing the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public
- ensuring effective oversight of the expenditure of public funds
- the information is personal information of the person to whom it is to be disclosed
- revealing or substantiating that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

You may consider other factors in favour of disclosure, in addition to this list. For example, you may identify that disclosure of the information could reasonably be expected to contribute to the protection or care of the environment and consider this as a factor in favour of disclosure.

You may consider *personal* factors in favour of disclosure of information: s 55. Personal factors may operate positively in conjunction with other factors in favour of disclosure: *GXG v Commissioner of Police (NSW)* [2025] NSWCATAD 274, [27].

You should consider additional factors and, where relevant, articulate and apply those additional factors in favour of disclosure. You should also consider contemporary events and materials in identifying public interest factors in favour of disclosure.

How do I identify the relevant public interest considerations *against* disclosure?

First, if the government information is described in sch 1, there is a *conclusive* presumption that there is an overriding public interest against disclosure: s 14(1).

Secondly, s 14 provides an *exhaustive* list of public interest considerations against disclosure set out in a Table. These are the **only** considerations against disclosure that you can consider in applying the public interest test:

- Responsible and effective government: cl 1
- Law enforcement and security: cl 2
- Individual rights, judicial processes and natural justice: cl 3
- Business interests of agencies and other persons: cl 4
- Environment, culture, economy and general matters: cl 5
- Secrecy provisions specifically provided in legislation: cl 6
- Exempt documents under interstate Freedom of Information legislation: cl 7.

Each of these considerations includes lists of relevant matters. The considerations against disclosure set out in cls 1– 6 require an objective assessment of whether disclosure of the information could 'reasonably be expected' to have the listed effects or consequence: *Newcastle City Council v Newcastle East Residents Action Group Inc* [2018] NSWCATAP 254, [59].

For the public interest consideration against disclosure in cl 7, it must be established that information was communicated to the New South Wales Government by the Government of the Commonwealth, or another State or Territory and that Government provided notice to the New South Wales Government that the information is exempt from disclosure within the meaning of its corresponding law.

You must be satisfied that the effect is proven as a fact established to the relevant standard of proof, on the balance of probabilities: *Bryant v Secretary, Department of Communities and Justice* [2021] NSWCATAD 73, [17].

What not to take into account

In applying the public interest test, you must *not* to take into account the fact that disclosure of information:

- might cause embarrassment to, or loss of confidence in the government
- might be misinterpreted or misunderstood by any person: s 15.

How do I weigh the public interest considerations in favour of and against disclosure?

You should refuse to disclose information **if, and only if,** there is an overriding public interest against disclosure: s 13. Where considerations on balance favour disclosure, or are evenly balanced, the presumption in favour of disclosure prevails, and information should be published or released.

You may identify one or even several public interest considerations against disclosure. In each case, you should consider a range of factors, including:

- the nature and context of the information
- any personal factors of the application: s 55
- any submissions made by an applicant
- the relative weight of public interest considerations for and against disclosure.

You may need to consult with other people (third parties) in relation to an access application: s 54. See Information Access Guideline 5: [full name]. You are required to have regard to this Guideline: s 15(b).

Can I tailor the access provided to respond to public interest concerns?

Yes. If you do decide to provide access in response to an access application, you can provide access in a range of ways, set out in s 71(1), by providing:

(a) a reasonable opportunity to inspect a record containing the information,

(b) a copy of a record containing the information

(c) access to a record containing the information, together with such facilities as may be necessary to enable the information to be read, viewed, or listened to (as appropriate to the kind of record concerned)

(d) a written transcript of the information in the case of information recorded in an audio record or recorded in shorthand or other encoded format.

You must provide access in the way requested by the applicant, unless, as set out in s 72(2):

(a) to do so would interfere unreasonably with the operations of the agency or would result in the agency incurring unreasonable additional costs, or

(b) to do so would be detrimental to the proper preservation of the record, or

(c) to do so would involve an infringement of copyright, or

(d) there is an overriding public interest against disclosure of the information in the way requested by the applicant.

Although the general rule under s 73(1) is that access to information must be unconditional, you *can* impose conditions on access in the following limited circumstances:

- as to how a right of access may be exercised (such as a condition that prevents an applicant making notes from or taking a copy of a record that is made available for inspection) but only to avoid there being an overriding public interest against disclosure of the information: s 73(2)
- that access to medical or psychiatric information will only be provided to a medical practitioner nominated by the applicant and not to the applicant personally: s 73(3)
- where access is conditional on payment of any processing charged imposed for dealing with the application: s 64(4)
- to provide evidence of any personal factors of the application that were relevant to a decision by the agency that there was not an overriding public interest against disclosure and, for that purpose, require the applicant to take reasonable steps to provide proof of their identity: s 55(5).

Making and communicating a decision

If you decide to refuse access to some or all of the information, you must:

- provide your reasons for the decision
- set out findings of fact on any material question of fact and reference your sources of information that informed you in relation to your findings
- set out the general nature and format of the records held by your agency that contain the information concerned: s 61.

In setting out your reasons, you must be aware that if your decision to refuse access to any government information is challenged, the onus will be on you to demonstrate that you have consciously considered the various public interest considerations in favour of, and against, disclosure and conducted the balancing test under s 13.

Other useful resources

Other resources that may be useful on this topic include:

- Information Access Guideline 5 – Consultation on public interest considerations under Section 54 and Section 54A of the GIPA Act
- IPC Fact Sheet – Why consult third parties

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.