Fact Sheet July 2026

Guide to section 121 of the GIPA Act for private sector contractors

Who is this information for?

If you are a private sector body contracting to that provide services to the public on behalf of NSW public sector agencies.

Why is this information important?

This Fact Sheet provides information on what government agencies must include in contracts with you and what information they must provide in response to an access request.

Relevant legislation

Government Information (Public Access) Act 2009 (GIPA Act) s 121

Overview

The purpose of s 121, in combination with sch 4 cl 12, is to bring certain information held by private contractors contracting with a government agency within the reach of the provisions of the GIPA Act.

The GIPA Act applies to information held by contractors that provide services to the public on behalf of agencies. Section 121 requires agencies to include provisions in their contracts with private sector entities that provide for an immediate right of access to certain information held by contractors, which is deemed to be government information and subject to the Act.

This Fact Sheet explains those requirements.

When does s 121 apply?

Section 121 applies where an agency enters into a contract with a private sector entity (the contractor), where the contractor is to provide services:

- to the public; and
- on behalf of the agency.

What is a 'private sector entity'?

A private sector entity is defined in the GIPA Act as any person or body (whether incorporated or unincorporated) who or which is not an agency: sch 4 cl 1.

The definition therefore extends to any person or entity contracting with government (other than another 'agency' under the GIPA Act), including non-government organisations and not-for profits. See IPC Fact Sheet – What is an agency?

'Person' is also defined in the GIPA Act to include the government of another jurisdiction (including a jurisdiction outside Australia) and an agency of the government of another jurisdiction: sch 4 cl 1.

What are 'services' to the public?

The concept of 'services' is broad and has no special meaning under the GIPA Act. If in doubt as to whether a particular contract is affected, contractors should seek legal advice.

What does s 121 require

Contracts to provide services to the public on behalf of an agency must provide for the agency to have an immediate right of access to the following information contained in records held by the contractor:

- information that relates directly to the performance of the services by the contractor
- information collected by the contractor from members of the public to whom it provides, or offers to provide, the services
- information received by the contractor from the agency to enable it to provide the services.

These are mandatory requirements for contracts that fall under s 121(1).

Are there exceptions to the requirement to contractually provide for a right of access?

Under s 121(2), a government contract is not required to provide for the agency to have an immediate right of access to any of the following information:

- information that discloses or would tend to disclose the contractor's financing arrangements, financial modelling, cost structure or profit margins

- information that the contractor is prohibited from disclosing to the agency by provision made by or under any Act (of this or another State or of the Commonwealth)
- information that, if disclosed to the agency, could reasonably be expected to place the contractor at a substantial commercial disadvantage in relation to the agency, whether at present or in the future.

What is the effect of a contractual provision under s 121?

Any reference in the GIPA Act to government information held by an agency includes information that is contained in a record held by a private sector entity to which the agency has an immediate right of access: sch 4 cl 12(1)(b).

Where contractual arrangements are in place for an immediate right of access to information, the information is deemed to be government information for the purposes of the GIPA Act. This means an access application can be made to the agency for the information.

Contractors who hold government information need to be aware of the operation of the GIPA Act and its objects of opening government information to the public, set out in s 3(1), by:

- authorising and encouraging the proactive public release of government information by agencies
- giving members of the public an enforceable right to access government information
- providing that access to government information is restricted only when there is an overriding public interest against disclosure.

As the custodians of government information, contractors have obligations to undertake adequate searches and deliver the information to the agency upon request: see IPC resources: Searches for information under the GIPA Act.

Contractors should be aware of the strict statutory timeframes for the agency to process access applications in s 57 and work with agencies to ensure compliance with the GIPA Act. See IPC Fact Sheet – *Timeframes and extensions for deciding access applications under the GIPA Act*.

Contractors should also know that the GIPA Act contains offence provisions at ss 116 to 120, which includes an offence of concealing or destroying government information.

What if the agency receives an access application for information I hold?

Where an access application is made for information held by a contractor and the agency has an immediate right of access to that information under the contract, the GIPA Act applies as it would to the agency's other government information.

This means that the access application will be managed in accordance with the procedures in the GIPA Act. Generally, any information that falls within the scope of the access application will need to be quickly made available to the agency's decision maker.

It is the government agency's responsibility to determine the application and decide whether it should include information in its disclosure log.

In deciding whether or not access should be provided to the information, the government agency will generally apply a public interest test in which it will consider public interest considerations in favour of and against the release of the information.

The agency may ask you for your view on release of the information: see IPC Fact Sheet – Why consult third parties. It will then balance these public interest considerations and come to a decision about whether or not to release the information: IPC Fact Sheet – What is the public interest test?

What is the timeframe in which I need to provide the information?

Section 121 requires that an 'immediate right of access' is included in the contract with you for the provision of services. You are required to appropriately manage and store the government information so that all relevant information may be promptly accessed.

You must use your best efforts to provide the information to the government agency as quickly as possible. You should speak to the government agency or seek legal advice if you are unclear of what is required of you.

Other useful resources

Other resources that may be useful on this topic include:

- IPC Fact Sheet – What is an agency?
- IPC resources: Searches for information under the GIPA Act
- Fact Sheet – Timeframes and extensions for deciding access applications under the GIPA Act.
- IPC Fact Sheet – Why consult third parties
- IPC Fact Sheet – Guide to section 121 for agencies

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.