information and privacy commission
new south wales

Monitoring of Agency Disclosure Log Practices Report

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Monitoring of Agency Disclosure Log Practices Report

Executive summary

Agency disclosure logs are an important element of the GIPA regime and can play a significant part in supporting Open Government. The *Report on the Operation of the Government Information (Public Access) Act 2009: 2014 – 2015* noted that:

> *Disclosure logs are integral to accessing information, government accountability and engagement with the public. The logs are an efficient measure of ensuring 'self-service' by citizens and obviate the need for more resource intensive mechanisms, such as access applications.*

In May 2017, the Information and Privacy Commission (IPC) commenced a monitoring program to assess each of the 10 principal departments' and the IPC's disclosure log and practices, with a focus on other-than-personal information and:

- the extent to which disclosure logs and practices comply with the *Government Information (Public Access) Act 2009* (GIPA Act);
- risks to agency compliance; and
- the contribution of disclosure logs to proactive release and the Open Data agenda.

The monitoring program included a desktop review of each agency's 'public facing' materials and engagement with agency staff.

The IPC found that agencies:

- are generally keeping applicants well-informed about the role of disclosure logs and their right to object to inclusion of information. However there is some variation in the comprehensiveness of the information provided which may lead to differing understanding by applicants or third parties of their rights to object
- need to support their decision-making on what may be of interest to the community with more formal, structured policies and guidance. Only one agency had a formal, documented and structured policy in place. This supported proactive release by stating:

  > *The department's policy position is that all information released under a GIPA non-personal access application will be made available on the Disclosure Log unless there are specific public interest reasons for not making it available in this way.*

- can do more to ensure the disclosure logs function effectively as a way to release information and support proactive release, Open Data and Open Government
- should examine the systems, policies and practices of other agencies to identify better practise as a basis for developing and informing their own practices to support agency heads as principal officers in upholding their disclosure log responsibilities.

In response to the IPC's monitoring a number of agencies are now improving their processes. To support this improvement the IPC will revise its guidance to:

- encourage the use of direct links to information;
- suggest standard words and templates for advising applicants and third parties of their right to object;
- suggest approaches and procedures consistent with the overall object of the GIPA Act; and
- encourage consistent decision-making within agencies.

Agencies are encouraged to:

- develop documented guidance for decision-making on what may be of interest to other members of the public;
- ensure the format and structure of disclosure logs are compliant with the GIPA Act and facilitate access consistent with the Act's object, such as by using direct links;
- regularly review the role of the disclosure log as part of their general review of proactive release activities under section 7(3) of the GIPA Act;
- integrate the disclosure log into the agency's Open Data strategies; and
- institute practices to ensure the disclosure log is maintained as a contemporary record; for example by setting a target for uploading information within 30 days of release in response to an access application.

1. Background methodology

1.1 Role of the Information Commissioner in assisting agencies

The role of the Information Commissioner under the GIPA Act includes promoting public awareness and understanding of the right to access government information in NSW, and providing information, support, advice, assistance and training to agencies and the general public. The Information Commissioner also monitors agencies' functions including reviewing decisions of agencies pursuant to Part 5 of the GIPA Act, reports to Parliament on the operation of the GIPA Act, and reports to the Attorney General about proposals for legislative or administrative change.

To assist agencies the Information and Privacy Commission (IPC) issued a knowledge update *Good practice for disclosure logs* in 2012. The IPC has also prepared a number of templates to assist agencies, including one for the layout and content of disclosure logs.

1.2 Importance of disclosure logs

Agency disclosure logs are an important element of the GIPA regime and can play a significant part in supporting Open Government. The 2014/15 Report on the Operation of the GIPA Act noted that:

> *Disclosure logs are integral to accessing information, government accountability and engagement with the public. The logs are an efficient measure of ensuring 'self-service' by citizens and obviate the need for more resource intensive mechanisms, such as access applications.*
>
> *There are real benefits that flow from proactive release to promote Open Government. These include improved service delivery, increased community participation in government processes and decision-making, a better informed community, and reduced costs and resourcing needs by decreasing the need for, and number of, access applications.*

The Report went on to note actions in a number of jurisdictions to enhance the contribution of disclosure logs:

- The Tasmanian Government introduced interim procedures on 9 June 2015 requiring that certain information released in response to Right to Information requests will be published online within 48 hours of being released to the applicant
- In Queensland, the *Right to Information Act 2009* requires "…agencies and Ministers … to include a copy of the released information in disclosure logs after it has been accessed by the applicant …" (section 78)
- The Commonwealth *Freedom of Information Act 1982* provides that "…agencies and Ministers must publish the released information to members of the public, for example, through making the information available for downloading from the agency or minister's website" (section 11C).

The 2016 report by the IPC, *Towards a NSW Charter for Public Participation*, also noted the role of disclosure logs and committed the IPC to:

> *…monitoring disclosure logs and identification of the various kinds of government information held by agencies and made available by agencies with the objective of promoting Open Government and Open Data.*

1.3 Purpose

In May 2017, the Information Commissioner wrote to the Secretaries of all principal departments to advise that a disclosure log monitoring program would be conducted in accordance with the Information Commissioner's function under section 17(g) of the GIPA Act to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act.

The monitoring program assessed each agency's, and the IPC's, disclosure log and practices, with a focus on:

- the extent to which disclosure logs and practices comply with the GIPA Act;
- risks to agency compliance; and
- the contribution of disclosure logs to proactive release and the Open Data agenda.

The expectation is that as well as driving improvements in the particular agencies, the lessons and opportunities identified in this report will assist all sectors to maximise the contribution of disclosure logs. The monitoring focused on other-than-personal information as agencies are not required to include personal information in disclosure logs.

1.4 Scope

Agencies included in the monitoring program were the 10 principal departments and the IPC. This was because:

- under the Departmental 'cluster' structure, Departmental Heads/Secretaries assume responsibility under the *Government Sector Employment Act 2013* (GSE Act) for the employment of public sector employees and determining the branches or groups of employees (s 22);
- the GSE Act requires public sector employees to "uphold the law, institutions of government and democratic principles" and "provide transparency to enable public scrutiny" (s 7);

- the scope of the clusters include a range of different bodies, and so give a broad base for assessing compliance and practices;
- principal departments include many of the most significant governmental functions where transparency is particularly important; and
- as principal departments, they are expected to demonstrate leadership in the use of disclosure logs.

The principal departments are:

- Department of Education
- Department of Family and Community Services
- Department of Finance, Services and Innovation
- Department of Industry
- Department of Justice
- Department of Planning and Environment
- Department of Premier and Cabinet
- Ministry of Health
- NSW Treasury
- Transport for NSW.

In addition, the IPC is included in the monitoring program on the basis that the IPC should strive to model best practice in regard to GIPA compliance and practices.

1.5 Methodology

The monitoring program methodology had two elements:

- a desktop review of each agency's 'public facing' materials such as application forms and the actual disclosure logs; and
- direct engagement with agency staff to gather information on processes supporting disclosure logs, such as their decision-making on what to include in the logs.

Stage 1: Desktop analysis

The desktop analysis considered whether:

- a disclosure log exists (s 25);
- the disclosure log is available on the agency's website (ss 6, 18);
- the disclosure log includes the date of decision, statement of availability and describes the information released (s 26);
- the description was clear enough to facilitate the object of the GIPA Act to open up government information by enabling potential requestors to identify the information available and therefore whether to attempt to access it; and
- information was available directly or via a request/ formal application.

Disclosure logs and application forms were downloaded by the IPC in June 2017 and these documents formed the basis of analysis.

Stage 2: Engagements with agencies

The engagements with agencies addressed:

- the agency's arrangements for managing the disclosure log, including identifying the area responsible for deciding whether to place information in the log;
- the decision-making process for determining whether information may be of interest to other members of the public and for inclusion in the disclosure log;
- how the agency uses their disclosure log to inform future proactive release of information and Open Data;
- templates provided by agencies of (a) the notice of decision (s 56(4)) and (b) written notice (s 56(4A)) and whether the documents include the required information concerning objections in:
  - → the notice of decision to an access applicant to an objector (s 56(4))
  - → the written notice to an objector that the agency consulted (excluding the access applicant) (s 56(4A)).

Engagements with agencies and the IPC occurred in the period 24 July to 4 August 2017.

1.6 Identification of agencies

The IPC has de-identified agencies in the analysis. Where specific areas of concern were identified we engaged directly with the respective agencies to guide improvements.

Report findings are presented around three questions:

- Are agencies ensuring the public are aware about disclosure logs and their right to access information using the disclosure logs?
- How do agencies decide what "may be of interest to other members of the public"?
- Are agency disclosure logs supporting information access and proactive release?

Findings

2. Are agencies ensuring the public are aware of disclosure logs and their rights to access information via the logs?

2.1 Advice to applicants

The GIPA Act requires that applicants be informed of the role of disclosure logs at a number of points during the consideration of their application:[1]

- when acknowledging receipt of an application; and
- when being notified of the agency's decision.

These provisions are important as they ensure that applicants understand that their information may be included in a disclosure log and that they have the right to object to this.

Applicants may object to inclusion on the grounds that the information (s 56(2)):

> *a. includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative), or*
>
> *b. concerns the authorised objector's business, commercial, professional or financial interests, or*
>
> *c. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector, or*
>
> *d. concerns the affairs of a government of the Commonwealth or another state (and the authorised objector is that government).*[2]

The IPC's desktop analysis found that most agencies notified applicants about the role of disclosure logs and their rights to object. This information was provided either in the application form (which is not prescribed in legislation), when acknowledging an application and/or when notifying a decision (required under s 56(3) and s 56(4A) when there is an objection). Agencies typically included words such as:

> *If the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in the agency's 'disclosure log'. This is published on the agency's website. Please note that this does not apply to your own personal information. Do you object to this? (Yes give details or No). (Application form)*

However, in some cases agency practices varied in the description of the applicant's right to object between:

- the application form;
- the acknowledging receipt template; and
- the notice of decision template.

Some acknowledgements and notifications stated only that the applicant had a right to object but did not advise of the specific grounds for such objection. For example one acknowledgement template advised:

> *Information about your application may be made public in our disclosure log. If you object to the information appearing on the [agency] disclosure log then please contact our office.*

Other agencies' acknowledgements gave a more comprehensive explanation. For example:

> *You have a right to object to these details being included in our disclosure log in certain circumstances. For example, you might object if the government information you seek contains your own personal information or concerns your business, commercial, professional or financial interests. However, even if you do object, we may still decide to include details about your access application in our disclosure log.*

Some agencies' notice of decision to a person who had been consulted included an explanation about putting information in a disclosure log, despite their objection. For example:

> *I have carefully reviewed the information sought by the applicant, taking into account your objection to its release. I have decided to release the information, even though you object. This is because (specify reasons for decision) [This should include an assessment of the greater weight of public interest in favour of disclosure].*

Providing a more comprehensive explanation to applicants is likely to improve understanding of their rights, and ensure objections are consistent with the GIPA Act.

2.2 Advice to applicants in application forms

The IPC noted that in addition to the mandated requirements a number of agencies (and the IPC's own template) referred to disclosure logs and the applicant's rights to object in the formal application form. While contributing to awareness of the disclosure log the application form typically only gave a very brief description of the disclosure log and then asked the applicant if they objected to inclusion. Because of limited space on the

1. Agencies can also provide information at an early stage such as on their 'right to information pages' or in application forms.
2. s 56(2) of the GIPA Act

form, the full grounds for objection were usually not included. Some agencies were conscious of the needs of particular clients and advised that providing more comprehensive information about objections could be overwhelming to some applicants and so they provided less detail.

This general reference to disclosure logs in the application form is not required by the GIPA Act. However, if only limited information is provided, it is possible that applicants would not understand their right to raise an objection and the impact of that objection. For example, applicants may not realise the limited grounds for objection.

2.3 Conclusion

Generally agencies are appropriately providing information to applicants and affected parties regarding the role and operation of disclosure logs. There is some variation in the comprehensiveness of the information provided. Differing practices, particularly those that limit the information provided (as opposed to customise) may restrict an understanding by applicants of their rights to object.

3. How do agencies decide what "may be of interest to other members of the public"?

Before placing information in the disclosure log agencies need to:

- consider if the information "may be of interest to other members of the public" (s 25); and then
- advise the applicant or affected third parties of this and seek any objection, and in light of any objection, make a final decision on whether to include the information in the disclosure log (s 25).

3.1 Considering if the information may be of interest

Section 25 of the GIPA Act requires that an agency (where it has decided to provide access to some or all of the information applied for) include in their disclosure log information about access applications that "…it considers may be of interest to other members of the public".

As a first step, all agencies excluded information released in response to applications for personal information from inclusion in their disclosure log. This is consistent with s 26(3)(a) of the GIPA Act which states that an agency is not required to include such information in the log. However, there may be circumstances where it will be in the public interest to include personal information and agencies should take this into consideration.

In considering what non-personal information to release, agencies used a variety of approaches to decide if information may be of interest.

Only one agency had a formal, documented and structured policy in place. This stated:

> *The department's policy position is that all information released under a GIPA non-personal access application will be made available on the Disclosure Log unless there are specific public interest reasons for not making it available in this way.*

This policy position was communicated via specific templates used to seek approval to place material onto the disclosure log. When a recommendation was made not to place the information on the disclosure log the templates required agency staff to provide specific reasons such as:

- the information is relevant to a small number of people only and is unlikely to be of interest to other members of the public;
- the information released contains material unsuitable for release because:
  - → it is particular to the applicant; or is the applicant's personal, business or research information;
  - → it is information about the affairs of the Commonwealth or other state government;
  - → to release information to the public through the disclosure log requires significant work to make the necessary deletions.
- disclosing the information to other members of the public may have a negative impact on the health, safety, welfare or wellbeing of staff or members of the community.

All other agencies had a less structured approach in making the decision:

- some considered factors such as the type of applicant making the application. For example, if the application was made by a Member of Parliament or journalist, this was taken to indicate that others in the community may be interested in the information.
- a number of agencies took a completely 'case by case' approach and advised that they informally adopted a presumption in favour of release (i.e. considered whether there was any reason why the information would not be included in the disclosure log) and/or considered factors such as the subject matter and the type of applicant.

There also appeared to be confusion for some agencies about the process to determine what 'may be of interest', with some suggesting they applied the same 'public interest test' used to guide release to the applicant.

The IPC also noted that the decision-making framework varied markedly between agencies. In some agencies there was a single decision-maker for all GIPA applications, while in others this role was delegated across business areas. While delegation may often be appropriate, it is important to provide sufficient training and guidance to such decision-makers to support a consistent approach across the agency. Without this, there is the risk of varying application of the public interest test and therefore varying attitudes to release of that information to the public. This may be a factor influencing the variation in the rate at which information is included in disclosure logs, discussed below.

3.2 Considering objections to release

As noted above, once the agency has concluded that information may be of interest to other members of the public, agencies should advise applicants and, if necessary,

affected third parties or 'authorised objectors' that the information they are seeking (especially if it is non-personal information) may be placed on the disclosure log, and seek any objection to that inclusion. Objections can only be made on a limited number of grounds set out in s 56(2).

In practice, agencies advised they had received very few objections. Most of these rested on s 56(b) regarding business, commercial, professional or financial interests.

Agencies did not provide details about the process for considering objections, other than objections were taken into consideration before deciding whether to include information in the disclosure log.

Agencies did advise that often journalists sought a delay (usually five to seven days) in the information being placed on the disclosure log, in order for them to 'break' the story first. Agencies varied in their attitude to these requests. One agency refused to offer a delay, and placed material on the disclosure log immediately. Some agencies agreed to the request and delayed release. Some others advised that as it usually took some weeks to place material on the disclosure log, no specific delay was necessary.

NCAT decisions

Section 80(m) of the GIPA Act provides that 'a decision to include information in a disclosure log despite an objection by an authorised objector'[3] is reviewable.[4]

In Mino v Legal Aid NSW [2015] NSWCATAD 245, the NSW Civil and Administrative Tribunal (the Tribunal) found that in relation to s 80(m), an agency's decision to include information in a disclosure log when there is an objection is reviewable, however an agency's decision not to include information is *not* reviewable.[5]

Southern Radiology Nuclear Medicine v Environmental Protection Authority [2014] NSWCATAD 145 concerned both the release of information to an access applicant and the inclusion of information in the Environmental Protection Authority's disclosure log despite Southern Radiology Nuclear Medicine's (a third party applicant) objection.[6] The Tribunal considered the public interest test and the impact of disclosure on the Applicant's commercial interests. The Tribunal was "not satisfied that the release of the information could reasonably be expected to have an unreasonable adverse effect on the Applicant's affairs".[7] The Tribunal found that the public would benefit from information being included in the disclosure log as they could access information about practitioner compliance.[8]

3 Section 80(m) of the GIPA Act.
4 Section 80 of the GIPA Act
5 http://www.ipc.nsw.gov.au/information-access-case-note-mino-v-legal-aid-nsw-2015-nswcatad-245
6 *Southern Radiology Nuclear Medicine v Environmental Protection Authority* [2014] NSWCATAD 145 [at 4, 8, 10, 39]
7 *Southern Radiology Nuclear Medicine v Environmental Protection Authority* [2014] NSWCATAD 145 [at 59]
8 *Southern Radiology Nuclear Medicine v Environmental Protection Authority* [2014] NSWCATAD 145 [at 63]

Number of entries in disclosure logs

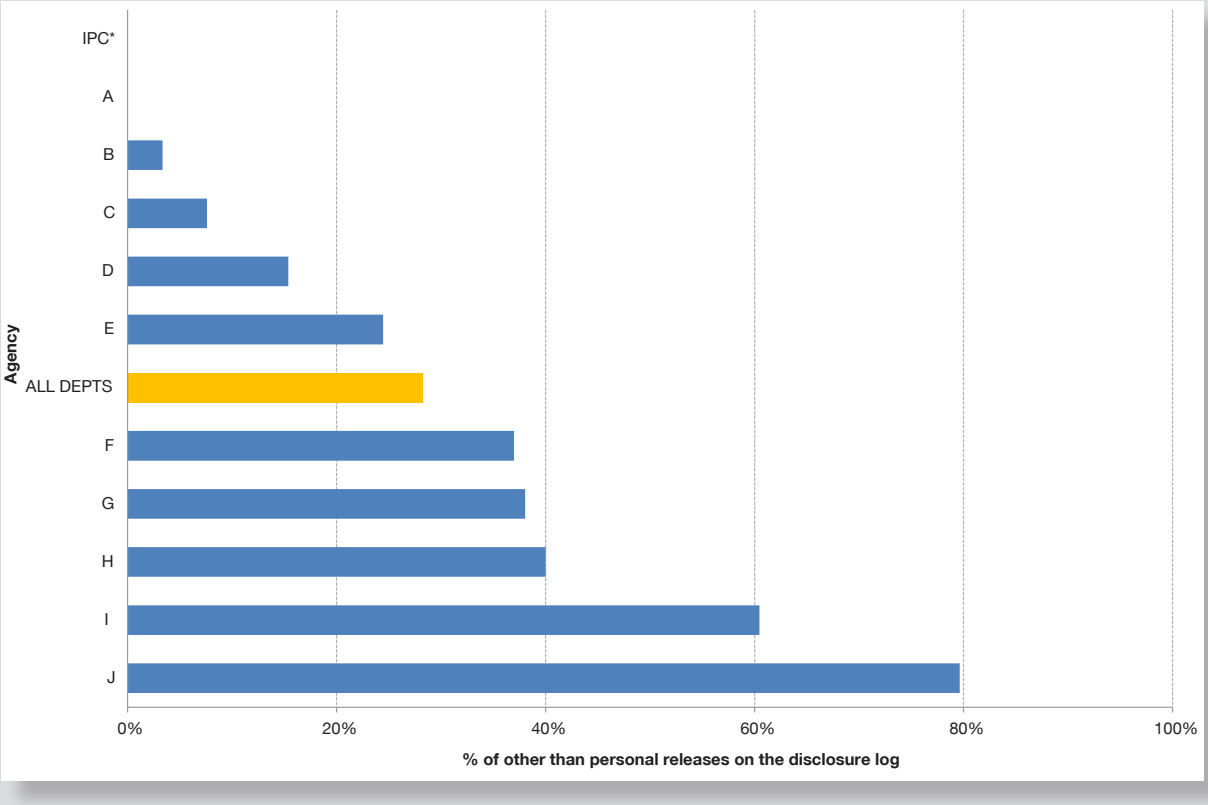
The IPC analysed the number of entries made in agency disclosure logs for 2015/16 compared to the number of decisions to release information fully or partly in regard to applications for non-personal information during that year and calculated a 'disclosure log ratio'.

As Figure 1 shows, this ratio varies for agencies in respect of non-personal information released from zero (where no entries were placed in the disclosure log) to 80 per cent of released information included in the log. Across all 11 agencies around 30 per cent of decisions resulted in information being included in disclosure logs.

In some cases a low ratio of disclosure log entry decisions may be due to a small number of decisions being made.

While there can be expected to be some variation between agencies, given the apparently small number of objections such a wide variation suggests there is scope to improve the consistency of decision-making. In particular, less formal approaches are more likely to vary depending on the individual decision-maker's interpretation. Such variation also suggests that the general presumption under the GIPA Act in favour of the disclosure of information unless there is an overriding public interest against disclosure is not being consistently met. The lack of structured decision making processes could lead to less information being released.

Figure 1: Percentage of other-than-personal information releases included in 2015/16 disclosure logs by agencies



** During 2015/16 the IPC did not make any decisions on applications for other-than-personal information and therefore did not place any information on its disclosure log.*

3.3 Conclusion

It is important to consider the type of information assessed in this process - non-personal information. Significantly agencies vary markedly in their approach to deciding whether information released may be of interest to other members of the public. These results, particularly as they relate to lower than sector benchmarks, may be affected by training, leadership and culture. Better practice (followed by one agency) is to adopt and articulate an explicit commitment to including information unless there are specific public interest reasons not to do so.

4. Are agency disclosure logs supporting information access and proactive release?

All agencies monitored had their disclosure log available on their website directly or via data.nsw.gov.au. This section considers whether those disclosure logs supported information access and proactive release and in particular whether:

- the structure and content of the log was consistent with the Act's requirements;
- access to the logs and information was simple and facilitated the broader goals of proactive access; and
- disclosure logs were up-to-date.

4.1 Structure and content

Under section 26(1) of the GIPA Act disclosure logs must include:

(a) the date the application was decided;

(b) a description of the information to which access was provided in response to the application; and

(c) 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.

The great majority of disclosure logs successfully addressed the requirements and most statements about access were clear, although the detail of descriptions vary.

However, the IPC did find that in one case the disclosure log included the date of publication instead of date of decision, as required.[9] The agency has undertaken to correct this.

As noted above, in the IPC 2016 report *Towards a NSW Charter for Public Participation* a commitment was made that the IPC will 'monitor disclosure logs and identify the various kinds of government information held by agencies and made available by agencies'.[10] The types of information released varied by agency, reflecting their differing holdings, complementary open access efforts (such as open data releases) and requests. Some agencies released a number of quantitative data sets while others tended to release documents regarding administrative decisions.

4.2 Ease of access to the log and information

The GIPA Act's objects are to open up government information to the public. Disclosure logs should be designed and implemented to support these objects, for example by making information as immediately and easily accessible as possible. Although not a legislative requirement the disclosure logs were examined to see how they supported the broad, proactive release aims of the Act.

In practice agencies took two main approaches. Information was either made available 'on request' or via a direct hyperlink to the information:

- three agencies used direct hyperlinks only;
- five made information available via request only; and
- three used a combination of both methods.

Of note, one agency used data.nsw.gov.au as a repository for its disclosure log and hyperlinks connected the agency website to the repository. However, once in the repository several more clicks were required to access the information, rather than a single click needed if the information was hosted on the agency's own website.

The IPC notes that, with advances in website and data technology, it is relatively straightforward to make substantial amounts of information immediately available and, generally, direct hyperlinks are preferable to maximise ease of access. Generally, agencies agreed that providing information included in disclosure logs through direct access would facilitate use by the public.

Nevertheless, agencies gave several reasons for not making information directly available on their website. These included:

- technical issues with making information available by direct link e.g. broken links on the webpage, technical difficulties in uploading information, and current agency-wide IT upgrades/changes that introduced instability;

9 s 26 of the GIPA Act

10 *Towards a NSW Charter for Public Participation*, p10.

- when considering whether to proactively release information, the agency considers whether the likely interest compared to the impact on IT resources to upload the information, and noted that in some instances it can be more suitable to respond on an individual basis due to resource limitations;
- providing information by request allows for a second check of the information to ensure it is correct before it is sent out and reduces the risk of inadvertent release;
- problems with ensuring effective redactions in electronic documents; and
- a policy of only releasing information in hard copy, to minimise risk of inadvertent release of additional information via embedded data or links.

4.3 Currency of disclosure logs

The GIPA Act does not specify a timeframe for including material in the disclosure log. However, timely updating of the disclosure log is necessary for agencies to ensure that the responsibilities of principal officers are upheld in respect of the proactive release of information.

The currency of the disclosure logs varied markedly (as indicated by the agency's most recent entry compared to the date at download of June 2017). For six agencies the most recent disclosure log application dates were 2017, for three agencies the most recent entry was for 2016 and for one agency the most recent entry was 2015.

Some agencies advised that uploading information to the disclosure log was a lower priority due to resource constraints in the Right to Information Unit (or equivalent unit). In response to IPC engagement they advised that they were engaged in a process of addressing the backlog.

In assessing resources available it is a responsibility of the agency overall to provide leadership and ensure sufficient resources are available to build capabilities. The IPC's fact sheet *The role of principal officers and senior executives in supporting the object of the GIPA Act* notes that agency leadership is required in a number of areas, including to:[11]

- uphold the Public Sector's leadership commitment;
- promote the four pathways;
- promote a pro-disclosure culture;
- raise awareness of information access issues regularly and proactively;
- assess whether to release data and other information under authorised proactive release;
- ensure the agency has sound record keeping practices;
- support informed and independent decision-making by Right to Information Officers;
- review the resources available for dealing with access requests; and
- monitor performance.

4.4 Contribution of disclosure logs to open government and open data

In discussions with agencies they recognised the potential for disclosure logs to support Open Data but considered other methods (such as providing agency data for direct download as Open Data) was a preferable approach to including in the disclosure log.

4.5 Conclusion

Overall, disclosure logs were compliant with the formal requirements of the GIPA Act. However, their effectiveness as a proactive release tool can be improved.

Disclosure logs provide the only legislated 'open access' mechanism enabling visibility and an assurance of the provision of access to information released through a GIPA application.[12] Agency concerns regarding the stability of information technology systems and platforms cannot be viewed as exclusive to disclose logs. Accordingly, linking or referencing information released to other sites from the disclosure log may ensure that the legislated right to access information is better achieved.

Accordingly the release of data through disclosure logs and, wherever possible, direct links to information (rather than requiring a specific request) and other repositories including data.nsw.gov.au will maximise the release and accessibility of information. This practice will also ensure that disclosure logs are up to date, and provide pointers to broader, Open Data initiatives.

5. Overall conclusion and future directions

A key intention of the GIPA Act is to encourage a fundamental shift toward proactive public release of government information by NSW public sector agencies. This shift of focus is one of the major means to meeting the GIPA Act's broader goal of advancing democratic government that is open, accountable, fair and effective.

Disclosure logs are an important element of the GIPA regime and are important in supporting the cultural shift toward proactive release.

11 http://ipc.nsw.gov.au/role-principal-officers-and-senior-executives-supporting-object-gipa-act

12 Section 18(d) of the GIPA Act

Monitoring of Agency Disclosure Log Practices Report

The IPC's monitoring of disclosure logs has found that agencies:

- are generally keeping applicants well-informed about the role of disclosure logs and their right to object to inclusion of information. However there is some variation in the comprehensiveness of the information provided which may lead to differing understanding by applicants of their rights to object;
- need to support their decision-making on what may be of interest to the community with more formal, structured policies and guidance;
- can do more to ensure the logs function effectively as a way to release information and support proactive release, Open Data and Open Government; and
- should examine the systems, policies and practices of other agencies to identify better practice as a basis for developing and informing their own practices to support agency heads as principal officers in upholding their disclosure log responsibilities.

In response to the IPC's monitoring a number of agencies are now improving their processes. To support this improvement the IPC will revise its guidance to:

- encourage the use of direct links to information;
- suggest standard words and templates for advising applicants and third parties of their right to object;
- suggest approaches and procedures consistent with the overall object of the GIPA Act; and
- encourage consistent decision-making within agencies.

Agencies are encouraged to:

- develop documented guidance for decision-making on what may be of interest to other members of the public;
- ensure the format and structure of disclosure logs are compliant with the GIPA Act and facilitate access consistent with the Act's object, such as by using direct links;
- regularly review the role of the disclosure log as part of their general review of proactive release activities under section 7(3) of the GIPA Act;
- integrate the disclosure log into the agency's Open Data strategies; and
- institute practices to ensure the disclosure log is maintained as a contemporary record, for example by setting a target for uploading information within 30 days of release in response to an access application.

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Appendix A: Relevant legislation

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

6. *Mandatory proactive release of certain government information*

(1) An agency must make the government information that is its open access information publicly available unless there is an overriding public interest against disclosure of the information.Note. Part 3 lists the information that is open access information.

(2) Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.

(3) At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.

(4) An agency must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.

(5) An agency must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.

(6) Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright.

18. *What constitutes open access information*

The following government information held by an agency is the agency's **open access information** that is required to be made publicly available by the agency under section 6 (Mandatory proactive release of certain government information):

(a) the agency's current agency information guide (see Division 2),

(b) information about the agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament,

(c) the agency's policy documents (see Division 3),

(d) the agency's disclosure log of access applications (see Division 4),

(e) the agency's register of government contracts (see Division 5),

(f) the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure,

(g) such other government information as may be prescribed by the regulations as open access information.

25. *Requirement for disclosure log*

An agency must keep a record (called its **disclosure log**) 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.

26. *Required information about access applications*

(1) The information about an access application that is required to be recorded in an agency's disclosure log is as follows:

(a) the date the application was decided,

(b) a description of the information to which access was provided in response to the application,

(c) 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.

(2) No details are required to be recorded in the agency's disclosure log:

(a) if no objection is made under section 56 to the inclusion of information in the log before the access application is decided—until the application is decided, or

(b) if an objection is made under section 56 to the inclusion of information in the log before the access application is decided—until the agency is entitled under that section to include the information in the log.

Note: See section 56 (5) and (6) as to when an agency is entitled to include information in its disclosure log following an objection under that section.

(3) An agency is not required to include in its disclosure log information about any application:

Appendix A

(a) for personal information about the applicant (the applicant being an individual) or any other individual, or

(b) in respect of which any factors particular to the applicant were otherwise a consideration in the agency's determination of the public interest in connection with the disclosure of the information to the applicant.

56. *Authorised objector can object to inclusion in disclosure log*

(2) The grounds on which an authorised objector is entitled to object to the inclusion of information in an agency's disclosure log are limited to any one or more of the following:

(a) the information includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative),

(b) the information concerns the authorised objector's business, commercial, professional or financial interests,

(c) the information concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector,

(d) the information concerns the affairs of a government of the Commonwealth or another State (and the authorised objector is that government).

(4) If an access applicant has objected to the inclusion of information in the agency's disclosure log, the agency's notice of decision of the access application must indicate:

(a) the agency's decision about whether the applicant was entitled to object, and

(b) (if the agency has decided that the applicant was entitled to object) the agency's decision on whether to include the information in its disclosure log.

Note: The agency's decisions are reviewable under Part 5.

(4A) If a person referred to in subsection (1) (b) has objected to the inclusion of information in the agency's disclosure log, the agency must, as soon as is reasonably practicable after the decision concerned is made (and in any event within 5 working days after the decision is made), give the person a written notice that indicates:

(a) the agency's decision about whether the person was entitled to object, and

(b) (if the agency has decided that the person was entitled to object) the agency's decision on whether to include the information in its disclosure log.

80. *Which decisions are reviewable decisions*

(m) a decision to include information in a disclosure log despite an objection by an authorised objector (or a decision that an authorised objector was not entitled to object).

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