

Managing access to audio visual information under the GIPA Act

Who is this information for?

For public sector agency staff.

Why is this information important?

This Fact Sheet helps you to recognise that Audio Visual (AV) information is a form of government information that needs to be managed to facilitate release to the public consistent with obligations under the *Government Information (Public Access) Act 2009*.

Relevant legislation

This Fact Sheet is based on the following legislative provisions:

Government Information (Public Access) Act 2009 (GIPA Act) pts 2, 4, sch 4

Government Sector Employment Act 2013 (NSW)

Privacy and Personal Information Protection Act 1998 (PPIP Act)

State Records Act 1998 (SR Act)

Overview

The object of the GIPA Act is to open government information, including AV information, to the public unless there is an overriding public interest against disclosure of the information.

This guidance includes advice and assistance to agency staff on:

- issues to consider in providing access to AV information via the GIPA Act
- managing AV information consistent with the SR Act
- dealing with personal information under the GIPA Act or the PPIP Act
- examples of good practices in how agencies currently handle the release of AV information
- where to go to get more information.

What is AV information?

AV material can consist of:

- closed circuit TV recordings (CCTV)
- recordings taken by body cameras, dashcams and in-car-video or mobile phones
- other visual recordings or still images (such as of meetings or events)
- audio recordings (such as of '000' calls, Council meetings, consultations or interviews)
- video material such as promotional or marketing material
- drone footage captured for regulatory purposes.

The use of AV information as a descriptive term categorises the information by its form of record rather than the method of recording. This recognises the broader spectrum of technology that is used to capture information, rather than the limited definition of CCTV which has a specific meaning. Such information may be created by the agency or received and held by the agency.

AV information and the GIPA Act

General approach

'Government information' is given a wide meaning as 'information contained in a record held by an agency': s 4. 'Record' is defined as 'any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means': sch 4 cl 10.

While AV information is captured in the same way as written information under the GIPA Act, making decisions about the release of AV information can pose some particular challenges.

Good records management practices consistent with the SR Act are essential:

AV information and the SR Act

AV information held by an agency is a State record and required to be managed in accordance with the SR Act, standards issued under the SR Act, and the retention and disposal authorities issued by the State Archives and Records Authority of NSW.

Sound record management policies and practices in agencies enable the subsequent disclosure of records and information via GIPA by:

- ensuring the right information is held for the right period
- providing assurance to applicants and the public that information is appropriately available making it easier to find/search for information, thus reducing costs to agencies and the public.

The foundation of good records and information management is a robust governance framework that ensures records are:

- routinely created and managed to meet the organisation's business needs and accountability requirements
- identifiable, retrievable and accessible for as long as they are required (with appropriate metadata)
- access to records and information is managed and provided in accordance with legal and business requirements
- stored appropriately and protected from unauthorised access, destruction, loss, deletion or alteration (security of systems, audit and system logs)
- retained and kept for as long as they are needed to meet business, legal and accountability requirements.

Relevant records and information management business rules and processes should be included in Agency Information Guides to inform the public's understanding of the agency's records and information governance framework: s 20.

Agencies should retain or keep AV information for the appropriate length of time. All agencies need to ensure that they have identified retention requirements for these records consistent with their operational, legal and accountability requirements. This includes in accordance with retention and disposal authorities issued by the State Archives and Records Authority of NSW.

See [State Records NSW](#) for further advice and guidance regarding the management of AV records and the SR Act.

If your agency creates or holds a lot of AV information, it should take the necessary steps to make it available to the public. Working closely with your Chief Information Officer and/or Chief Information Digital Officer may facilitate access. A specific statement on how this material can be accessed will also assist members of the public seeking access.

For example, the City of Sydney has a Street Safety Camera Program Code of Practice which describes how the program works and how access is granted: <https://www.cityofsydney.nsw.gov.au/policies/street-safety-camera-program-code-practice>.

Figure 1: Extract of City of Sydney Code of Practice on 'Street Safe' Cameras

17.4	Civilian application for viewing and/or supply of a copy of recorded material
17.4.1	Where a person who is not a member of the NSW Police wishes to view or obtain recorded material, the following procedure must be followed:
i)	the applicant must complete an Application to View or Obtain a Copy of Recorded Material by a Person Other Than a Member of the NSW Police (see Schedule 4 - Form 2)
ii)	the completed application form must be forwarded by mail, fax or email to the SSCP control room (see 17.3.5)
iii)	A City of Sydney Responsible Officer will then review the application in accordance with section 17.3

Another approach is to include a description of any specific AV access arrangements as part of the agency's general access to information page or Agency Information Guide.

For example, on its 'Information Access' webpage, Transport for NSW provides information to the public on how to access CCTV footage held by the agency. Of particular note is that the page advises the public that CCTV footage may be held only for a short time, and that an informal application under the GIPA Act is encouraged: <https://www.transport.nsw.gov.au/about-us/access-to-information>.

Figure 2: Extract from Transport for NSW website on how to access CCTV footage held

CCTV footage
Transport agencies operate and maintain a number of closed circuit television cameras (CCTV cameras) which are used for security and monitoring purposes.
Some of these CCTV cameras are only used to monitor and do not record footage.
Except where a particular incident has been identified, most footage is retained for one to two weeks only.
Members of the public can request access to CCTV footage that transport agencies hold. As footage is usually only kept for a short time, we deal informally with any request for CCTV footage. Please send a written request for footage to: information@transport.nsw.gov.au or
Information Access Unit
Transport for NSW
18 Lee Street, Chippendale NSW 2008
In your request, please provide as much specific information about the time, location and detail of the incident.
Upon receiving your request, we will endeavour to save and retrieve any relevant footage.
Should we locate and retrieve relevant footage, we will contact you to provide you with the option of applying to access it under the Government Information (Public Access) Act 2009 (GIPA Act). All applications require a standard \$30 application fee.
You may also request access to CCTV footage (PDF, 253.81 KB) .
Important information about CCTV requests

AV information and the GIPA Act's four pathways

Agencies are able to provide access via a number of pathways: pt 2 div 1. In each pathway, the public interest test applies, where agencies are authorised to make government information publicly available unless there is an overriding public interest against disclosure of the information: pt 2 div 2. See [Fact Sheet – What is the public interest test?](#)

Proactive release

This may include, for example, an agency choosing to release CCTV for public safety reasons or the release of footage for a particular agency event or announcement: see IPC fact sheet: [Authorised proactive release of government information](#).

Informal release

Agencies are authorised to release government information in response to a request that is not an access application, unless there is an overriding public interest against disclosure of the information. This may include release of AV material to a person who has requested information relating to them or to another person (third party) who has requested it: see IPC Fact Sheet: [Informal release of information](#).

Using this pathway allows agencies to release information subject to any reasonable conditions that the agency thinks fit to impose, despite the risk of non-compliance with the conditions or inadvertent release of unredacted material.

CASE STUDY: Informal release of audio visual information – *Seven Network Limited v South Eastern Sydney Local Health District* [2017] NSWCATAD 210

If an agency uses the informal pathway in the GIPA Act, it is able to release information subject to reasonable conditions, including redacting or pixelating information before releasing it further. These conditions can be used to enable release when, for example, the agency does not have the resources or technology to redact the information itself.

A government sector agency has used the informal pathway to release CCTV information to media applicants subject to conditions, such as a requirement to pixelate and remove personal information, before publishing the information. Using the informal pathway in this way has facilitated prompt access to the CCTV information at the lowest reasonable cost to the applicant and the agency while ensuring personal information remains protected.

Formal release

A person can make a formal access application under pt 4. They have a legally enforceable right to be provided access to the information, unless there is an overriding public interest against disclosure of the information. This may include release of AV information that concerns a particular function of the agency or a public official.

Issues to consider in deciding an application for AV information

Communication with the applicant

You are required to provide advice and assistance to applicants: s 16. This can be important regarding AV information if clarity about the request is needed.

You may need to speak to the applicant about the scope of the information sought at several points during consideration of their request. This can assist if the request appears to seek a large amount of AV information which may either be too large an amount to provide, too expensive, or if part of the footage is irrelevant to the applicant's request. It is possible that the applicant may be satisfied with a smaller amount of AV information, or for the information to be provided in another form (see forms of access below).

Personal factors of the application

You are entitled to take a number of personal factors of the applicant into account when deciding whether to provide access to information:

- (a) the applicant's identity and relationship with any other person
- (b) the applicant's motives for making the access application
- (c) any other factors particular to the applicant: s 55.

The reason for the request might be, eg, for research, to support preparation of a civil claim, or to reproduce via media such as television or the internet.

For example, for a video of a traffic accident, you will need to decide if the public interest in improving road safety alone, or with other factors, outweighs the importance of protecting personal information. The decision on whether to release information might therefore vary, depending on whether the applicant was a media company wanting to broadcast the footage or a road safety researcher wanting to understand the causes of traffic accidents.

It is also open to you to impose a condition on access to medical and psychiatric information so that a medical practitioner nominated by the applicant receives the information, and not the applicant personally: s 7(3).

Personal/health information

The disclosure of personal/health information, where the information is about the person to whom it is to be disclosed, is considered a public interest consideration in favour of disclosure. Where the information is the personal/health information of another person, it is considered a public interest consideration against disclosure.

Personal information is defined as ‘information or an opinion about ... an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion’: sch 4 cl 4.

If you believe that personal information may be revealed in the footage, or contravene the PPIP Act or *Health Records and Information Privacy Act 2002*, you could consider whether pixelation of that information could sufficiently address those concerns: s 74.

For further guidance, agencies should refer to IPC [Guideline 4: Personal information as a public interest consideration under the GIPA Act](#).

CASE STUDY: Consideration of revealing personal information and disclosure of that information: *Commissioner of Police, NSW Police Force v Field* [2016] NSWCATAP 59

Issue: Would personal information revealed in CCTV footage of a public place, which recorded an incident, be taken to be disclosed?

The question is “whether access to footage actually taken and in the possession of the government, should be permitted, according to the regime laid down in GIPA”.

The Appeal Panel in *Field* found definitions of personal information in the GIPA Act are wide, not defined by reference to matters that have occurred in private, but concerned with information ‘about an individual’.

When it comes to the question of whether personal information has been revealed, the statutory provisions are concerned with revealing information, not revealing an event to which the information relates. Further, the fact that some information about an event is publicly disclosed doesn’t mean other information has been.

To ‘reveal’ information is defined as ‘to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure)’: sch 4 cl 1. Accordingly, if the personal information has already been publicly disclosed in a lawful manner, this consideration against disclosure cannot be relied on: pt 4 div 6.

Consultation

Information proposed for release that contains personal information or information about the person’s business, commercial, professional or financial interests may require an agency to undertake consultation.

You must consider whether a person would have concerns about disclosure of the information and whether those concerns are relevant to a public interest consideration against disclosure: s 54. A person is defined as including an individual, a corporation and a body corporate or politic.

AV information, especially CCTV footage, often captures other people that are not related to the scope of a request for information. You are able to decide whether it is reasonably practicable to consult with them. Having agency policies for dealing with these matters will assist in guiding your decision making.

For further information, see IPC [Guideline 5: Consultation on public interest considerations under section 54 and section 54A of the GIPA Act](#).

Forms of access, redaction and deletion of information

Forms of access

One of your decisions can be *how* to provide access in a way that is suitable to the needs of the applicant and efficient for your agency.

You *must* provide access in the way requested by the applicant, unless it would (s 72(2)):

- interfere with agency operations or result in unreasonable additional costs on the agency
- be detrimental to preserving the record properly
- infringe copyright, or
- there is an overriding public interest against disclosure in the way requested by the applicant.

There are different ways that may be available to you to provide access:

- by inspection: eg, a person may inspect AV information at the agency premises
- providing a copy of a record: eg, an agency may provide a copy of CCTV on a disc or electronically
- providing the facilities to view a record: eg, an agency may provide the hardware and software for AV information to be accessed

- a print-out of a still image from CCTV footage
- in a written transcript: eg, an agency may transcribe an audio recording.

The multiple forms of access provide options for you to best satisfy the applicant's request.

CASE STUDY:

The University of Sydney provided access to a still of CCTV footage relating to a university protest which satisfied the applicant's request and protected the privacy of other individuals that may be identified.

Redaction

Often a major consideration in releasing information will be the extent to which it contains personal information of other people, such as CCTV capturing the images of members of the public.

You can delete information from a copy of the record, either because it is not relevant to the application or because you have decided not to release the information: s 74.

Redaction of AV information is often needed. This is of particular importance when considering release of AV information via the formal release pathway as you may not impose conditions on the use or disclosure of information released under an access application: s 73.

Some considerations are:

- only removing information that you have decided not to release and avoid over-editing the AV information
- ensuring the information is permanently removed, not just masked, as some techniques can be reversed
- the cost of redaction can be significant and should be considered when providing estimates of processing charges or requests for advance deposit.

You should consider the appropriate technology for redaction of information, how to mitigate the risk of re-identification and, where possible, consider the appropriate technology to facilitate release when the AV capture technology is first acquired (eg, information access by design).

A range of tools are available to assist with redaction, and right to information officers should seek internal or external advice on techniques. Options might include:

- commercial redaction software

- 'whole of screen' blurring if sufficient information is preserved to meet the applicant's needs
- capturing single frames, for example every second, to provide sufficient information and enable easier redaction by, eg, including in a PDF file.

Processing charges

You may impose a charge for dealing with an access application at a rate of \$30 per hour for each hour of processing time for the application: s 64.

This fee is waived for the first 20 hours if the request is for the applicant's own personal information (including where their personal information is included along with others' information).

You have an obligation to deal efficiently with the application and provide access based on the lowest reasonable estimate of time spent in providing access.

You should communicate with the applicant before issuing your notice of decision, about whether or not it is possible to edit the requested information and if so, any processing charges that may apply.

CASE STUDY: Redaction of Personal Information: *Seven Network Limited v South Eastern Sydney Local Health District* [2017] NSWCATAD 210

In reviewing a decision not to release AV information, the Tribunal found that there would be no public interest consideration against disclosure if the identifying information in the video footage was pixelated. The Agency, however, did not have the facility to pixelate the footage itself.

The applicant offered to pay the costs of pixelation by a third party under the direction of the Agency and NCAT decided the agency should release the information in the light of this commitment. This shows that an applicant and agency might come to an agreement concerning the costs of redacting or pixelating AV information.

Notices of decision

Your notice of decision should explain clearly the reasons for your decision and:

- thoroughly address whether the disclosure would reveal individuals' personal information
- outline the consultation that has taken place: eg, with other people, and if it is not practicable, why this is so

- clearly explain any particular technological barriers to release, such as whether AV information files are encrypted and therefore cannot readily be edited or pixelated
- details the searches that were undertaken to locate the requested information.

This information will be important if the applicant seeks external review or administrative review as the onus is on your agency to explain the decision: ss 97, 105.

The IPC has also developed a [Notice of Decision template](#) to assist agencies.

Acknowledgements

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Further information

Information about	Where to go
NSW Government policy on records management	Standard on records management General Retention and Disposal Authority: Video/visual surveillance records (GDA8) General Retention and Disposal Authority: Administrative records (GA28) www.legislation.nsw.gov.au <i>State Records Act 1998</i> <i>State Records Regulation 2015</i> Government Recordkeeping Phone: (02) 8257 2900 govrec@records.nsw.gov.au
Particular responsibilities of local councils	Office of Local Government Phone: (02) 4428 4100 www.olg.nsw.gov.au
NSW government policy on ICT	Department of Customer Service Phone: (02) 9372 8877 www.customerservice.nsw.gov.au

Release of information via GIPA Act or the PPIP Act

Information and Privacy Commission NSW (IPC)
 Phone: 1800 472 679
ipcinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au

Other useful resources

Other resources that may be useful on this topic include:

- [IPC Fact Sheet – Authorised proactive release of government information](#)
- [IPC Fact Sheet – Informal release of information](#)
- [IPC Fact Sheet – What is the Public interest test?](#)
- [IPC Information Access Guideline 4 – Personal information as a public interest consideration under the GIPA Act](#)
- [IPC Information Access Guideline 5 – Consultation on public interest considerations under section 54 and section 54A of the GIPA Act](#)
- [IPC Template - Notice of Decision template](#)

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.