

Accessing information held by a contractor providing government services

This fact sheet provides information to applicants seeking information that may be held by a private sector or non-government organisation (NGO) providing services on behalf of a government agency to assist applicants to understand how section 121 of the *Government Information (Public Access) Act 2009* (GIPA Act) affects them.

Section 121 of the GIPA Act requires government agencies to insert a mechanism in their contracts to obtain access to certain information held by contractors when they provide services to the public on behalf of the government agency.

Who does this apply to?

This requirement only applies to contractors who provide services to the public on behalf of government agencies. These contractors can include private, non-government and not-for-profit organisations. For example, an NGO that provides a health service for a government agency.

How does this apply to an applicant?

When you apply for information from a government agency under the GIPA Act, the information may be held by a contractor.

Section 121 of the GIPA Act allows government agencies to include a clause into its contracts providing a right of immediate access to certain information.

If the contract between the agency and the contractor has such a clause, the government agency has an immediate right of access to that information.

Information obtained by agencies from contractors through such a contractual clause forms part of the "government information" that agencies hold.

For example, you may apply to a government agency for information about a health service. If the information is held by a contractor that provides a health service on behalf of a government agency, and the contractor has such a clause, then the government agency can access that information.

What information can government agencies access from NGOs?

Section 121 of the GIPA Act requires government agencies to ensure that their contracts provide them with an immediate right of access to information:

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

Is any information excluded?

A contractor does not need to provide the government agency with an immediate right of access to the following types of information:

- information about the contractor's financing arrangements, financial modelling, cost structure or profit margins
- information that the contractor is prohibited from disclosing to the government agency because of another law, and
- information that could reasonably be expected to place the contractor at a substantial commercial disadvantage in relation to the government agency at present or into the future.

This means that a contractor does not need to provide government agencies with this type of information if they ask for it through this specific clause in the NGO's contract.

How will an applicant know if a contractor holds the information that is being sought?

You may not know whether a contractor holds the information you are seeking. An access application would need to be made to a government agency. The government agency would then make inquiries about where the information is held.

If the information is held by a contractor, the government would make arrangements to access the information, through the section 121 provisions.

The government agency would also need to consider whether it holds information relevant to your application in its own right.

Should an applicant contact a contractor to request government information?

If you are seeking government information and you think it may be held by a contractor, you should contact the relevant government agency to seek access to the information. If a contractor holds the information, the government agency will make arrangements to access that information.

What do government agencies do with the information provided?

Government agencies follow a prescribed process for deciding whether or not an access applicant should be provided with access to the information. The government agency will consider factors in favour of and against the release of the information.

The contractor may have a right to be consulted under section 54 of the GIPA Act before the agency decides to release the requested information, if it relates to the contractor. This will involve the government agency asking the contractor about its view on release of the information. The government agency will then balance these factors and come to a decision about whether or not to release the information.

If the contractor objects to information being disclosed, the government agency must take that objection into account when determining if there is an overriding public interest against disclosure. However, an objection alone will not decide the outcome of an application. Review rights exist for third party objectors.

For more information on third party consultation, see the [Fact Sheet – Third party consultation](#) on the IPC website.

For more information on this process, see the [Fact Sheet – What is the public interest test?](#) on the IPC website.

Review rights for applicants

You have the right to request a review of certain decisions¹ made by government agencies about the release of information under the GIPA Act.

You have 20 working days² after the notice of a decision has been given to you to ask for an internal review by the agency that made the decision. An agency may accept an application for internal review outside of this timeframe, but is not obliged to do so.³

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review,⁴ but you can ask for an external review.

The review must be carried out by an officer who is no less senior than the person who made the original decision.⁵ The review decision must be made as if it was a fresh application.⁶

There is a \$40 fee for an internal review application. An agency may choose to waive the internal review fee.⁷

No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time⁸ or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision.⁹ In this case, you cannot be charged any review fee.

The agency must acknowledge your application within five working days of receiving it.¹⁰ The agency must decide the internal review within 15 working days¹¹ (this can be extended by 10 working days if the agency has to consult with a third party not previously consulted,¹² or by agreement with you.¹³

If you are dissatisfied with certain government agency decisions about releasing information, you can apply to the Information Commissioner to review those decisions.

You have 40 working days from the time the decision is given to you to ask for a review by the Information Commissioner. A review by the Information Commissioner is free.

¹ Section 80 GIPA Act

² Section 83(1) GIPA Act

³ Section 83(2) GIPA Act

⁴ Section 82(2) GIPA Act

⁵ Section 84(2) GIPA Act

⁶ Section 84(1) GIPA Act

⁷ Section 127 GIPA Act

⁸ Section 85(2) GIPA Act

⁹ Section 93(6) GIPA Act

¹⁰ Section 83(3) GIPA Act

¹¹ Section 86(1) GIPA Act

¹² Section 86(2) GIPA Act

¹³ Section 86(4) GIPA Act

If an applicant or an agency disagrees with the final review report or recommendations made by the Information Commissioner, they may seek a review with the NSW Civil and Administrative Tribunal (NCAT).

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.