

Complaints about the actions of agencies

The purpose of this fact sheet is to provide guidance about the lodging of complaints to the Information Commissioner regarding the conduct of agencies under the *Government Information (Information Commissioner) Act 2009 NSW* (GIIC Act).

Who can make a complaint to the Information Commissioner?

Any person may complain to the Information Commissioner about the conduct (including action or inaction) of a NSW [government agency](#)¹ in exercising the agency's functions under an Information Act.

What conduct can I complain about?

You can complain about the way in which an agency carried out its functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, a complaint could be about:

- the availability of an agency's open access information
- an agency's response to an informal request for information
- the content of an agency's agency information guide
- an agency's policies and procedures about access to information
- the time taken by an agency to respond to a request for information; and
- an agency or person acting in a way that may indicate that an offence has been committed under the GIPA Act.

What conduct cannot be the subject of complaint?

In general, you cannot make a complaint about an agency's decision to:

- refuse to give you access to information
- refuse to deal with your application
- reasonableness of the searches that were undertaken in response to your application
- refuse to confirm or deny that information is held by the agency.

These decisions are some of the 'reviewable' decisions that an agency can make. Reviewable decisions cannot be the subject of a complaint to the Information Commissioner.²

The Information Commissioner cannot deal with customer service complaints about an agency that do not involve information access functions.

A complaint about an agency is different to requesting a review of the agency's decision by the Information Commissioner.

If you want a review of a decision about an access application (also known as a formal access application), please see [GIPA reviews for further information](#).

How can I make a complaint?

Your complaint may be able to be addressed promptly by the agency. For this reason you may wish to try to resolve your complaint directly with the agency. You should contact the agency to find out the process for lodging a complaint directly.

If you decide to make a complaint to the Information Commissioner, you can contact the IPC or access the Complaint to the Information Commissioner webform from the [website](#).³

You should briefly outline why you are making the complaint, and include (where applicable) a copy of all relevant correspondence between you and the agency.

The following specific information will assist the IPC in completing an initial assessment of your complaint:

- Which agency are you complaining about?

¹ For a list of agencies you may complain about please see [What is an agency?](#)

² Section 17 GIIC Act

³ <https://www.ipc.nsw.gov.au/media/2476>

- What specific conduct are you complaining about?
- When did the conduct relevant to your complaint occur?
- How does that conduct relate to the exercise of functions under the GIPA Act (for example, was the conduct in relation to a request for access to information under the GIPA Act)?

To lodge a complaint or to find out more about how to lodge a complaint you can:

- Telephone us on 1800 472 679
- Write to us at the Information and Privacy Commission GPO Box 7011, Sydney, NSW 2000.

Complaints about offences under the GIPA Act

The offences as provided by the GIPA Act are:

- Section 116 – offence of acting unlawfully.
An officer of an agency must not make a reviewable decision in relation to an access application that the officer knows to be contrary to the requirements of the GIPA Act.
- Section 117 – offence of directing unlawful action. A person (known as the offender) must not:
 - Direct an officer of an agency who is required to make a decision in relation to an access application to make a reviewable decision that the offender knows is not a decision permitted or required to be made by the GIPA Act (section 117(a)).
 - Direct a person who is an officer of an agency involved in an access application to act in a manner that the offender knows is otherwise contrary to the requirements of the GIPA Act (section 117(b)).
- Section 118 – offence of improperly influencing decision on an access application. A person (known as the offender) who influences the making of a decision by an officer of an agency for the purpose of causing the officer to make a reviewable decision that the offender knows is not the

decision permitted or required to be made by the GIPA Act is guilty of an offence.

- Section 119 – offence of unlawful access. A person who in connection with an access application knowingly misleads or deceives an officer of an agency for the purpose of obtaining access to government information is guilty of an offence.
- Section 120 – offence of concealing or destroying government information. A person who destroys, conceals or alters any record of government information for the purpose of preventing the disclosure of the information as authorised or required by or under the GIPA Act is guilty of an offence.

Complaints that involve these offences will require the Information Commissioner to consider evidence. If the information Commissioner is reasonably satisfied⁴ that an offence may have occurred, she may refer the matter to the Director of Public Prosecutions (DPP) and inform the Attorney General.

Further information is located in the IPC Fact Sheet – [Offences under the GIPA Act](#).⁵

What is the timeframe for lodging a complaint with the Information Commissioner?

There is no time limit for lodging a complaint with the Information Commissioner. However it is generally better to raise your concerns as soon as possible.

What does it cost to lodge a complaint to the Information Commissioner?

There is no fee for the Information Commissioner to deal with a complaint.

What can the Information Commissioner do?

The Information Commissioner can look at a range of factors including the process the agency has followed and the agency's conduct during the process.

The Information Commissioner generally makes preliminary inquiries to determine whether to deal or not deal with the complaint.⁶

⁴ (*Briginshaw v Briginshaw* (1938) 60 CLR 336)

⁵ <https://www.ipc.nsw.gov.au/node/2727>

⁶ Section 18(2) GIIC Act

The Information Commissioner may deal with a complaint by taking appropriate measures to assist in the resolution of the complaint, including (but not limited to) any of the following measures:

- providing information to the person who made the complaint and the agency involved
- undertaking discussions concerning the complaint with the person who made the complaint and the agency involved
- facilitating the direct resolution of the complaint between the person who made the complaint and the agency involved (including by conciliation or other informal process).

The Information Commissioner must also give notice to the complainant of the Information Commissioner's decision on whether to deal with the complaint and (if the Information Commissioner decides to deal with the complaint) how the complaint is to be dealt with.⁷

It is important to remember that the Information Commissioner is not an advocate on behalf of a complainant. The Information Commissioner is required to act impartially and independently of both the agency and a complainant.

Do I have any review rights?

There are no review rights in relation to the outcome of a complaint to the Information Commissioner.

How will my complaint be handled?

After receiving your complaint the steps that the IPC may take to deal with your complaint include:

- complete an initial assessment of the complaint to assess whether we can deal with your complaint, taking into account:
 - whether your complaint provides specific and relevant information about the issues you would like the Information Commissioner to consider in dealing with your complaint
 - whether the concerns raised in your complaint fall within the Information Commissioner's complaint handling jurisdiction (that is, whether the concerns relate to conduct in the exercise of functions under the GIPA Act)

- allocate the complaint file to a case officer and make preliminary inquiries with the complainant and/or the agency
- write to you to confirm the issues that will be dealt with in your complaint and to provide reasons if any of the issues you have raised will not be considered
- review your complaint and assess the available information to decide what action, if any, the IPC should take⁸
- ensure we have all relevant information to progress your complaint, including your consent to the disclosure of your personal information and the details of the complaint.

Following preliminary inquiries the IPC will assess the information to decide how to deal with your complaint.

If the IPC decides to take no action on your complaint, you will be provided with reasons for our decision.

If the IPC decides to deal with your complaint, the IPC will notify you and the agency that the IPC has received a complaint and explain how the complaint will be dealt with. In dealing with a complaint our aim is to address the issues as quickly as possible.

Most complaints will be dealt with by providing information to both the complainant and the Agency to ensure information access obligations are met. The IPC will inform you of the outcome of your complaint and the reasons for its decision.

In a smaller number of complaints, the IPC may facilitate discussion of the complaint with relevant parties to facilitate a resolution. In some cases the IPC may also deal with a complaint where serious non – compliance is identified by investigating the complaint.

The [Information Commissioner's Regulatory Framework](#) provides more information about the factors that the IPC will consider when assessing a complaint and whether action or what action is appropriate.

How will I know what's happening with my complaint?

The IPC will keep the parties informed of throughout the complaint handling process including:

- confirming receipt of your complaint
- at regular intervals to advise on progress of your case

⁷ Section 20 GIC Act

⁸ Section 18(2) GIC Act

- advising if further information is required
- advising when there is an outcome.

You can also contact the IPC at any time to enquire about the progress of your complaint.

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.