



Reasonable searches under the GIPA Act

Knowledge update
December 2018

Section 53 of the *Government Information (Public Access) Act 2009* (GIPA Act) sets out the obligations of NSW public sector agencies to undertake searches for information requested in an access application.

Receiving an access application

A valid access application under the GIPA Act requires an applicant to include such information as is reasonably necessary to enable the relevant government information to be identified.

Once satisfied that it understands what information has been requested, an agency must then undertake searches to ascertain whether or not the information is held. A common theme in the reviews conducted by the Information Commissioner is that applicants consider that the agency has not properly searched for the information requested. This knowledge update seeks to provide some guidance to agencies regarding what is a reasonable search and how to deal with the issue of having conducted reasonable searches in the agency's notice of decision

What is a reasonable search?

Agencies are required to undertake a reasonable search for information requested in an access application. What constitutes a reasonable search will depend on the circumstances.

Specifically, the requirements are that an agency:

- must undertake such reasonable searches as may be necessary to find any of the government information applied for,¹
- must conduct the search using the most efficient means reasonably available to and the agency.²

The obligation of an agency to provide access to government information in response to an access

application is limited to information held by the agency when the application is received.³

The GIPA Act defines "government information" as "information contained in a record held by an agency."⁴ This means that searches will need to be broadly conducted and include both paper-based and electronic records.

Best practice is for a notice of decision to include the following information about the searches conducted:

- an explanation of what the agency understands the applicant's request to be;
- how the agency's recordkeeping system is organised;
- how information is retrieved from the recordkeeping system;
- if the system is electronic, the search terms used by the agency to identify information relevant to the request;
- if the system is a paper-based system, how the information is stored and how the agency was able to ascertain what information was relevant to the applicant's request; and
- the steps taken by the agency to retrieve any documents that are the subject of the request.

Agencies are not required to search for information in records held in an electronic backup system unless a record containing the information has been lost, destroyed, transferred or otherwise improperly dealt with.⁵

¹ GIPA Act section 53(2)

² GIPA Act section 53(2)

³ GIPA Act section 53(1)

⁴ GIPA Act section 4

⁵ GIPA Act section 53(4)

How to be satisfied that a reasonable search has been conducted

The NSW Civil & Administrative Tribunal (NCAT) has held that the factors required to determine whether an agency has conducted a reasonable search are:

- (a) whether there are reasonable grounds to believe that the requested information exists and is held by the agency; and
- (b) whether the search efforts made by the agency to locate such information have been reasonable in all the circumstances of a particular case.⁶

In determining each of these criteria, the individual circumstances of the application and the steps taken by the agency are relevant.

Notices of decisions

While the GIPA Act does not require an agency to include in its notice of decision details of searches undertaken, the Information Commissioner considers that it is good practice for agencies to clearly explain what the search processes were, what was found, an explanation if no records were found, what was released and what was not.

Details of searches may include:

- where and how the agency searched;
- a list of any records found (including, if appropriate, the relevant business centre);
- the key words used to search electronic records (including any alternative spelling used); and
- a description of the paper records that were searched.

External review

In conducting a review, the Information Commissioner will look at whether there may be further information within the scope of the access application and if so, whether the agency has shown that it has taken reasonable steps to find it.

⁶ See, for example *Fisher v Roads and Maritime Services NSW* [2018] NSWCATAD 52 at [17]

In NCAT proceedings, the agency bears the onus of satisfying the Tribunal that searches conducted were reasonable in the circumstances.⁷

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

⁷ See, for example, *Zonneville v Department of Finance, Services and Innovation* [2017] NSWCATAD 186 at [34]