



Internal Reviews under the GIPA Act

The purpose of this fact sheet is to provide guidance about lodging an application for internal review of an agency's decision under the *Government Information (Public Access) Act 2009 NSW (GIPA Act)*.

Who can apply for an internal review of the agency's decision?

Any person who is aggrieved by a reviewable decision is entitled to ask for an internal review. This includes the access applicant and any third party objectors. It may also include other people who would be affected by the agency's decision.

If you disagree with an agency decision about an access application, you may be able to apply to the agency for an internal review of that decision.

What types of decisions can be reviewed?

The GIPA Act lists the types of decisions a government agency may make about a request for information that can be reviewed.¹ These are:

- (a) a decision that an application is not a valid access application
- (b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- (c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- (d) a decision to provide access or to refuse to provide access to the information in response to an access application
- (e) a decision that the government information is not held by the agency
- (f) a decision that the information applied for is already available to the applicant
- (g) a decision to refuse to confirm or deny that the information is held by the agency
- (h) a decision to defer the provision of access to the information in response to an access application

1 Section 80 GIPA Act

- (i) a decision to provide access to the information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- (j) a decision to impose a processing charge or to require an advance deposit
- (k) a decision to refuse a reduction in a processing charge
- (l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- (m) a decision to include information in a disclosure log despite an objection by the access applicant (or a decision that the access applicant was not entitled to object).

An internal review can be limited to a particular aspect of a reviewable decision (such as specific information that the agency made a decision about).

What is the time frame for seeking an internal review?

You have **20 working days** from the date the decision is given to you to ask for an internal review.² An agency can accept an internal review out of time, but it is not required to do so.³

What is a working day?

A working day is defined as any day that is not a Saturday, a Sunday, public holiday or any day during the period declared by the Premier as the Christmas closedown period.⁴

2 Section 83(1) GIPA Act

3 Section 83(2) GIPA Act

4 Clause 1, Schedule 4 to the GIPA Act

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What do the words *given to* mean?

A recent Tribunal decision, *Choi v University of Technology Sydney* [2017] NSWCATAD 198 considered the meaning of the words ‘given to’ in looking at whether an application for internal review had been made within time.

The question before the Tribunal in *Choi* was about giving a notice of decision by email however the Tribunal in looking at the words “given to” also looked at decisions being given to a person by post.

In *Choi*, at [23], the Tribunal’s reasoning was that the words “given to” have their ordinary meaning of “delivered” or “handed over”.

The Tribunal in *Choi* found that the notice was given to the applicant when it was received by email.

The Tribunal in *Choi* at [24] to [25] also referred to previous decisions of Tribunals which considered the question of when a decision may be given to a party by posting a letter, served by post, which is when the letter would be delivered in the ordinary course of the post, unless it can be proved otherwise.

The Tribunal observed that the email notice was sent by the agency to the Applicant and there was no dispute that the email was received. In those circumstances the Tribunal could not be satisfied that there was a reasonable excuse for the Applicant’s delay in lodging a request for administrative review to the Tribunal.

What is service by post?

Section 76 of the *Interpretation Act 1987* provides that:

(1) If an Act or instrument authorises or requires any document to be served by post (whether the word “serve”, “give” or “send” or any other word is used), service of the document:

(a) may be effected by properly addressing, prepaying and posting a letter containing the document, and

(b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth working day after the letter was posted, and

(c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of post.

What is the cost for an internal review?

You have to pay a \$40 fee for an internal review unless:

- the agency agrees to waive or reduce the fee⁵; or
- you are asking for an internal review of a decision to refuse to deal with an access application because the agency did not decide the access application within time (a deemed refusal), in which case no fee is payable; or
- the internal review was recommended by the Information Commissioner.

An agency has discretion to waive, reduce or refund a fee payable or paid under the GIPA Act in any case that the agency thinks appropriate, subject to the regulations.

When is an internal review not available?

An internal review is not available if:

- the decision was made by the principal officer of the agency⁶
- the decision was made by a Minister (or a member of the Minister’s personal staff)⁷
- the decision is or has been the subject of review by the Information Commissioner⁸ (this does not apply if the internal review was recommended by the Information Commissioner)
- the decision is or has been the subject of an administrative review by the NSW Civil and Administrative Tribunal (NCAT).⁹

You are not entitled to an internal review of a decision that was itself the subject of an internal review.¹⁰

5 Section 127 GIPA Act

6 Section 82(2) GIPA Act

7 Ibid

8 Section 82(4) GIPA Act

9 Section 82(5) GIPA Act

10 Section 88 GIPA Act

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How can I request an internal review?

You need to contact the agency who made the decision to request an internal review. You can do this by writing to the agency or by using the contact details provided in the notice of decision. The agency may ask you to complete an application form. Usually the agency will help you fill out the form if you ask them to.

What should I include in my request for review?

If the agency has a specific form for requesting an internal review you should fill out the form and return it to the agency. Provide the agency with enough information to identify the decision you would like to have reviewed. This could include the agency's reference, the date of the decision, or a copy of the decision. It is also helpful if you include your reasons for asking for an internal review and information about whether you would like the whole decision reviewed or only part of the decision.

Will my request for an internal review be acknowledged?

Yes. An agency must acknowledge receipt of an application for internal review in writing as soon as practicable after the agency receives the application and in any event within five working days after the application is received.

If your request for internal review is not acknowledged within five working days we suggest you contact the agency to confirm they have received your request.

Who will conduct the internal review?

The internal review will be done by a person who did not make the original decision.¹¹ The internal reviewer will be at least as senior as the person who made the original decision.¹² An agency may arrange for an independent external person to conduct the internal review, but they are not required to do so.

¹¹ Section 84(2) GIPA Act

¹² Ibid

What will the internal reviewer consider?

The internal reviewer will make a new decision about your request for information. The internal review decision will be a fresh decision, as though the original decision had not been made. The internal review decision will be made as if it is being made when the access application was originally received. This means that the agency is not required to consider any additional records that match the information you asked for if it did not hold those records when you first submitted your access application¹³. The agency is not prevented from providing you with records created after the date of your access application, but this is at the agency's discretion.

You will receive a new notice of decision with the internal reviewer's reasons for their decision. Although the internal review is a fresh decision, the internal reviewer may consider the following when they make their decision:

- your access application
- the original decision
- information found as a result of the original decision maker's searches
- guidance material, case law and authorities that relate to your access application, whether this material was created before or after the date of your access application
- correspondence between you and the agency before and after the date of the original decision. This includes correspondence about the scope of your access application, your identity and relationship with any other person, your reasons for asking for the information, other information particular to you, and concerns you may have about the original decision.

If the issue in the internal review is about whether the agency holds the information you asked for, the internal reviewer should conduct new searches before making their decision.

¹³ Section 53(1) GIPA Act

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How long will the internal review take?

The agency should make its decision within 15 working days, unless this time frame is extended.¹⁴ If the agency reasonably believes that more than one person is entitled to an internal review of any reviewable decision for the same access application, the 15 working days in which an agency is required to complete an internal review does not begin until the expiration of the time in which any of those persons can apply for internal reviews. Internal reviews can be extended by up to 10 working days if the agency needs to consult with someone that was not consulted when the agency made its original decision.¹⁵ The timeframe can also be extended if you and the agency agree to an extension of time.¹⁶

The agency must give you notice of any extension of the internal review period before the internal review period ends. This notice must indicate the new date on which the extended internal review period will end.¹⁷

What happens if the internal review is not completed within time?

If an internal review decision is not made within the internal review period, the agency is deemed to have made the original decision again.¹⁸ You will be entitled to a refund of any fee paid to the agency for an internal review that is not completed within time.

What if I have a question about my internal review?

You should be provided with at least one person's name and their contact details when your internal review is acknowledged. This is the best person to contact if you have any questions throughout the internal review process. You can also contact the Information and Privacy Commission NSW (IPC) if you have any general questions about the internal review process.

14 Section 86(1) GIPA Act

15 Section 86(2) GIPA Act

16 Section 86(4) GIPA Act

17 Section 86(3) GIPA Act

18 Section 86(5) GIPA Act

What if I disagree with the agency's internal review decision?

If you disagree with the agency's internal review decision we suggest that you first contact the agency and discuss your reasons for disagreeing with the decision.

If the matter is not resolved, you can seek an external review by the Information Commissioner or NCAT. You have **40 working days** from the date the internal review decision is given to you to seek an external review.¹⁹

Any person who is aggrieved by an internal review decision is entitled to ask for an external review. This includes the access applicant and any third party objectors. It may also include other people who would be affected by the agency's decision.

Do I have to have an internal review before an external review?

If you are the person who applied for access to the information, you do not have to have an internal review of the decision before asking the Information Commissioner to review it. An aggrieved person who is not the access applicant is not entitled to apply to NCAT for administrative review of a decision if the person is still entitled to apply for internal review of the decision. An internal review is not required before asking NCAT to review a decision if you are the original access applicant. However, if you are not the original access applicant (i.e. you are a third party), you must seek an internal review before applying for review by the Information Commissioner²⁰ unless an internal review is not available to you.

Where can I find out more information about reviews?

You can contact the IPC if you would like more information about internal reviews.

Freecall: 1800 472 679

Email: ipcinfo@ipc.nsw.gov.au

Website: www.ipc.nsw.gov.au

19 Sections 90 and 100 GIPA Act

20 Section 89(2) GIPA Act

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