



## Open Access Information

*This fact sheet provides a guide to open access information that agencies must make available and assists you to understand your rights in accessing this information.*

Under the *Government Information (Public Access) Act 2009* (GIPA Act) all NSW agencies are required to publish a range of open access information online, unless there is an overriding public interest against disclosure.<sup>1</sup> Importantly there is a presumption in favour of release of government information to the public.<sup>2</sup>

### What is open access information?

Section 6 of the GIPA Act makes it mandatory for agencies to release the following information, unless there is an overriding public interest against disclosure:

- an agency information guide describing an agency's structure and functions and how those functions affect the public, as well as the type of information held by the agency and how that information is made publicly available
- documents tabled in Parliament by, or on behalf of, an agency
- an agency's policy documents
- a disclosure log of information released under formal access applications that may be of general public interest
- a register of contracts an agency has with private sector entities for a value of \$150,000 (inclusive of GST) or more, and
- a record of the open access information that it does not make public due to an overriding public interest against disclosure.<sup>3</sup>

The *Government Information (Public Access) GIPA Regulation 2018* (GIPA Regulation) also specifies that:

1. Ministers must disclose any media release they issue, and details of overseas travel (including purpose and anticipated benefits, destinations, dates, number of persons accompanying the Minister and costs of airfares, accommodation and other travel expenses).<sup>4</sup>
2. Government departments must publish a list of their major assets, the total number and value of properties disposed of in the previous financial year, their guarantee of service and code of conduct, and any standard, code or other publication in any Act or statutory rule administered by the Department (if any).<sup>5</sup>
3. For local councils, Schedule 1 to the GIPA Regulation lists the additional open access information that must be made publicly available, including:
  - annual, financial, and auditors reports, management plans and various codes<sup>6</sup>
  - returns of the interests of councilors, designated persons and delegates<sup>7</sup>
  - agendas, business papers and minutes of meetings<sup>8</sup>
  - information contained in certain registers<sup>9</sup>
  - plans and policies<sup>10</sup>
  - development applications and associated documents (for applications and decisions made on or after 1 July 2010),<sup>11</sup> and
  - information concerning approvals, orders and other documents.<sup>12</sup>

<sup>4</sup> GIPA Regulation clause 6(1)

<sup>5</sup> GIPA Regulation clause 6(2)

<sup>6</sup> GIPA Regulation clause 1(1) of Schedule 1

<sup>7</sup> GIPA Regulation clause 1(2)(a) of Schedule 1

<sup>8</sup> GIPA Regulation clause 1(2)(b)-(c) of Schedule 1

<sup>9</sup> GIPA Regulation clause 1(3) of Schedule 1

<sup>10</sup> GIPA Regulation clause 2 of Schedule 1

<sup>11</sup> GIPA Regulation clause 3 of Schedule 1

<sup>12</sup> GIPA Regulation clause 4 of Schedule 1

<sup>1</sup> GIPA Act section 6(1)

<sup>2</sup> GIPA Act section 5

<sup>3</sup> GIPA Act section 18

An advertising compliance certificate issued under the *Government Advertising Act 2011* is open access information.<sup>13</sup>

**Note: Ministers and their staff are not required to publish an agency information guide under the GIPA Act.**<sup>14</sup>

### What is the benefit/purpose of open access information?

The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information sharing practices across NSW agencies, as well as providing members of the public with an immediate right of access to important government information.

In line with the object of the GIPA Act,<sup>15</sup> the mandatory release of this type of government information helps to foster responsible and representative government that is open, accountable, fair and effective.

It does this by placing the onus on agencies to push information into the public domain, which, in effect:

- promotes open discussion of public affairs, enhancing government accountability and contributing to the positive and informed debate on issues of public importance
- informs the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public, and
- ensures effective oversight of the expenditure of public funds.

### How do agencies release open access information? Is there a charge?

**All open access information must be available free of charge** on an agency's website, unless this would impose an unreasonable additional cost on the agency.<sup>16</sup> If this is the case, at least one alternative method of access must be free of charge.<sup>17</sup> Therefore, agencies may charge for open

access information **only** if it is available for free in at least one other format.

In addition to online publishing requirements, local councils must also make open access information available for inspection and copying at council offices.<sup>18</sup> Local councils may impose copying charges "not exceeding the reasonable cost of photocopying".<sup>19</sup>

### Does the public interest test apply to open access information?

Yes. In some circumstances an agency may partially or fully withhold open access information due to an overriding public interest against disclosure.<sup>20</sup> If an agency refuses to release open access information for this reason, it must publish on its website a record of the open access information it does not make publicly available due to an overriding public interest against disclosure.<sup>21</sup> If an application for open access information is made through the formal access application process<sup>22</sup> and the agency refuses to release information the agency must provide you with written reasons.<sup>23</sup>

### How do I get open access information?

Looking at an agency's website is a good place to start as open access information must be made available on an agency's website, unless this would involve an unreasonable cost to the agency.<sup>24</sup> As a matter of good practice, the IPC encourages agencies to display its open access information prominently online, making it easy to access.

If open access information is not available on an agency's website, contact the agency directly and ask for the information.

### Do I need to complete a form to request open access information?

No. There is no formal requirement for individuals to fill out a form to request (or access) open access information.

Some agencies ask that a request form be completed for internal administrative purposes, and there is nothing in the GIPA Act to prevent this.

However, because agencies have a legal

<sup>13</sup> GIPA Regulation clause 4(2)

<sup>14</sup> GIPA Act section 20

<sup>15</sup> GIPA Act section 3

<sup>16</sup> GIPA Act section 6(2)

<sup>17</sup> GIPA Act section 6(3)

<sup>18</sup> GIPA Regulation clause 5(1)(a)

<sup>19</sup> GIPA Regulation clause 5(1)(b)

<sup>20</sup> GIPA Act sections 6(1),(4)

<sup>21</sup> GIPA Act sections 18(f), 6(5)

<sup>22</sup> GIPA Act section 9

<sup>23</sup> GIPA Act section 61

<sup>24</sup> GIPA Act section 6(2)

obligation to release open access information (subject to the public interest test), access to this information cannot be made conditional on filling out a form.<sup>25</sup>

If your informal request is refused you may wish to lodge a formal request for information.

### I can't find certain open access information online

Just because open access information may not be visible on an agency's website does not necessarily mean it is not publicly available. In some situations, agencies may not be able to publish open access information electronically due to a lack of resources or technological capacity.

If you cannot find the information you are looking for after searching an agency's website, or do not have access to the internet, you should contact the agency's Right to Information Officer for assistance.

Alternative methods of access may include providing paper or electronic copies of information, or viewing the information at the agency's office.<sup>26</sup>

As a matter of good practice, when information is not published online, agencies should note clearly on their websites the alternative ways that information can be accessed. This is in line with an agency's responsibility to provide advice and assistance to a person under section 16 of the GIPA Act.

### I've spoken to the agency and still cannot get access

Members of the public who are having difficulty obtaining open access information from an agency may contact the IPC for further information and assistance.

Our office can consider:

- an individual's concerns and confirm whether the matter relates to open access information
- a situation in which an individual appears to have been refused open access information not subject to an overriding public interest against disclosure.

Our possible response may involve:

- talking informally with an agency to address an isolated incident or problem,
- a more formal complaint investigation in light of wider systemic operational issues.

### For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Ebsite: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

<sup>25</sup> See GIPA Act sections 73, 55, 64

<sup>26</sup> See GIPA Act section 72