



Changes to the GIPA Act in 2018 – guidance for citizens

The *Government Information (Public Access) Amendment Act 2018* made a number of amendments to the *Government Information (Public Access) Act 2009* (GIPA Act). These amendments came into effect in November 2018 and impacts on how agencies now fulfil their obligations under the GIPA Act.

This fact sheet has been developed to inform citizens of the key changes that affect them.

Making an access application

To make a valid access application you must include your name, a postal or email address.

You are also required to disclose in your access application whether you have applied to another agency, at any time, for substantially the same information, and if so, which agency you previously applied to. However, your application will not be invalid if the information is not included.

With the changes, agencies can approve additional ways of making an access application or payment of an application fee, such as electronic lodgement by email, or a website and payment by EFT, or credit card.

Proof of identity of the applicant

An agency may require you to prove your identity before providing you with personal information requested in your access application.

Decisions that information is already available

An agency can now refuse to deal with an access application on the grounds that the information is already available to the applicant where:

- the information has already been provided to you, or
- the information is publicly available on a website, or
- the information is available under a standing rule or order of the Legislative Council or Legislative Assembly.

Decision to refuse to deal with an application

An agency may refuse to deal with an access application where the agency reasonably believes the applicant (or a person acting with the applicant) is:

- a party to current proceedings before a court, and
- is able to apply to the court for the information.

Unreasonable and substantial diversion of resources

In deciding an access application an agency may take into account the following factors when deciding whether an application would involve an unreasonable and substantial diversion of an agency's resources:

- the estimated volume of information involved in the request
- the agency's size and resources
- the required period for deciding an application.

Consideration of any of the above factors must, on balance, outweigh:

- the general public interest in favour of the disclosure of government information, and
- the demonstrable importance of the information to the applicant, including whether the information is personal information that relates to the applicant, or could assist the applicant in exercising their legal rights.

External review by the Information Commissioner

From 28 November 2018, the Information Commissioner has 40 working days ('review period') from the day on which all necessary information relating to a review application has been received by the Information Commissioner, to complete the review of a decision and make any recommendations.

The Information Commissioner and an applicant can agree to an extension of time for the review period.

If the Information Commissioner does not make any recommendations in the review period, the Information Commissioner is deemed to have made no recommendations to the agency about their decision.

The Information Commissioner must notify you when the review is completed and of any recommendations made.

Burden of proof during external review by the Information Commissioner

During an external review by the Information Commissioner of a decision to include information in a disclosure log despite an objection by the applicant, the applicant must establish why the objection outweighs the public interest to have the information included.

Definition of ‘working day’

The definition of a ‘working day’ means any day that is not a Saturday, Sunday, public holiday or any day during the period declared by the Premier as the Christmas closedown period.

Administrative review of decisions by NCAT

An aggrieved person, who is not the access applicant, must seek internal review under the GIPA Act before applying to the NSW Civil and Administrative Tribunal for an administrative review of the agency’s decision.

Personal information

Information about an individual (comprising the individual’s name and non-personal contact details, including the individual’s position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that they were engaged in the exercise of public functions, is not ‘personal information’ for the purposes of the GIPA Act.

Further Guidance

Citizens are encouraged to refer to this factsheet and the GIPA Act and Regulation before relying on any guidance materials published prior to December 2018.

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.