



information
and privacy
commission
new south wales

NSW Police Force

GIPA Act – Follow up compliance report – Phase 1

August 2020

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Abbreviations

The following table lists the commonly used abbreviations within this report.

| Acronym or abbreviation | Explanation |
|-------------------------|---|
| AAMS | Access Application Management System |
| GIIC Act | <i>Government Information (Information Commissioner) Act 2009</i> |
| GIPA Act | <i>Government Information (Public Access) Act 2009</i> |
| IPC | Information and Privacy Commission |
| NSWPF | NSW Police Force |
| PAC | Police Area Command |
| PD | Police District |
| SOP | Standard Operating Procedure |

1 Purpose

The purpose of this follow up audit is to assess the:

- implementation of recommendations made by the Information and Privacy Commission (IPC) and accepted by NSW Police following an IPC audit finalised in 2019; and
- level of compliance by NSW Police responsive to the issues identified by the IPC in the 2018/2019 audit.

The history, issues considered, and the recommendations made as a result of the 2019 audit are set out below.

In 2018/2019 the Information Commissioner conducted an audit in accordance with section 21 of the [Government Information \(Information Commissioner\) Act 2009](#) (GIIC Act) to examine the systems and processes of the NSW Police Force (NSWPF) in relation to dealing with applications for access to information under the [Government Information \(Public Access\) Act 2009](#) (GIPA Act). The findings and recommendations of that audit were published in a GIPA Act compliance report in April 2019 which is available on the IPC's website [here](#).

The purpose of the 2018/2019 audit was to assess the compliance of the NSWPF with the GIPA Act in fulfilling its responsibilities under Part 2, Part 4, Part 5 and Part 7 of the GIPA Act. The audit was limited to the specific management of the formal access application process under the GIPA Act and did not consider all compliance requirements under the GIPA Act. Specifically, the 2019 compliance report assessed compliance with Part 2, Division 3 – Assistance and oversight; Part 4, Division 3 – Process for dealing with access applications; Part 4, Division 4 – Deciding access applications; Part 5, Division 2 – Internal review by agency; Part 5, Division 3 – Review by Information Commissioner; and Part 7 – Miscellaneous – requirements for notices given by agencies.

That audit considered:

- processes to assist decision making including timeliness and responses to search requests;
- case management processes including templates and information to assist staff when processing access applications;
- the general conduct of internal reviews;
- training and guidance for officers undertaking GIPA Act functions;
- the processes to support agency review following recommendations by the Information Commissioner; and
- processes to assist citizens seeking information under the GIPA Act.

The audit also considered a complaint received by the IPC under the GIIC Act raising issues relating to the timeliness for processing an access application, the conduct of searches for information and communication by the NSWPF with the applicant regarding the status and progress of the access application (see Chapter 5 of the 2019 compliance report).

The 2019 compliance report made 22 recommendations arising from the audit examining NSWPF systems, policies and practices. It also made a further 10 recommendations particular to the complaint aspect of the audit relevant to improving communication and compliance with search requirements and statutory timeframes. Some of these additional recommendations aligned with recommendations made in the broader audit examining NSWPF systems, policies and practices.

The 2019 compliance report noted that the IPC would continue to assist the NSWPF as it implemented those recommendations. Additionally, the report proposed the following mechanisms to monitor the NSWPF compliance with the GIPA Act following the issuance of the report:

1. by conducting a follow up audit within 12 months from the date of the report, and
2. by asking the NSWPF to report to the Information Commissioner quarterly, pursuant to section 24(3) of the GIIC Act, on the implementation of the recommendations made arising from the audit, commencing 1 May 2019.

Since the publication of the 2019 compliance report, the IPC has engaged with the NSWPF to monitor its progress of compliance against the recommendations made in the 2019 compliance report.

In February 2020, the IPC advised the NSWPF of an intention to undertake an onsite follow up audit in May 2020, consistent with the recommendations of the 2019 compliance report.

However, the unforeseen impact of the COVID-19 pandemic and the associated restrictions applicable under NSW Health Orders required the IPC to reconsider its approach to the follow up audit. The IPC gave notice of its intended approach to the follow up to NSWPF on 17 April 2020. NSWPF supported the approach noting that it had also implemented measures relevant to its offices as a result of responding to COVID.

As a result, the IPC has determined it would be appropriate to proceed with the follow up audit in two phases:

Phase 1: An audit to be undertaken remotely to consider the implementation of the recommendations relevant to the development of systems, policies, templates and SOPs, as well as an analysis of the data reported by the NSWPF to the IPC and data from the NSWPF GIPA dashboard relevant to the implementation of the recommendations, and

Phase 2: An onsite audit of the practical application of the GIPA access application process.

This report relates to Phase 1 of the follow up audit only.

The IPC will monitor future advice relating to COVID-19 restrictions and will endeavor to conduct the Phase 2 of the follow up audit as soon as possible in the circumstances.

2 Background

The 2019 compliance report identified a number of concerns in relation to NSWPF's handling of access applications and regulatory engagement to facilitate compliance with the GIPA Act.

In undertaking the 2019 compliance audit, the IPC considered the NSWPF GIPA dashboard which highlighted access application performance as follows at that time:

- the number of applications decided within the statutory timeframe declined from 94% in 2015/16 to 84% in 2016/17
- the number of requests for internal reviews was significantly above the sector average in 2016/17 at 55% compared to 37% across the government sector
- the percentage of reviews where the decision was upheld declined significantly from 43% in 2015/16 to 24% in 2016/17
- the overall release rate in 2016/17 was 67% compared to the government sector average of 73%.

As noted above, this report relates to Phase 1 of the follow up audit which will consider the implementation of recommendations relevant to the development of systems, policies, templates and SOPs, as well as an analysis of data reported by the NSWPF to the IPC and data from the NSWPF GIPA dashboard relevant to the recommendations. This report sets out the outcome of the IPC's review of the progress made by NSWPF in the implementation of those recommendations.

The NSWPF has provided the IPC with regular updates as to its progress against the recommendations. This has included regular statistical reporting relevant to the number of access applications received under the GIPA Act and the outcomes of those applications.

Resource application by NSW Police in support of GIPA functions

Although the 2019 compliance report did not make recommendations regarding the number of officers involved in GIPA functions at the NSWPF, it did note that the NSWPF had advised that staff shortages had contributed to its ability to satisfy the statutory decision-making timeframes under the GIPA Act. The IPC acknowledges the information provided by the NSWPF in July 2019 relating to the recruitment of staff to perform functions under the GIPA Act and notes that adequate staff and resources to support the exercise of functions under the GIPA Act are essential to compliance with statutory obligations.

Given the performance issues which informed the first audit, the IPC has also considered the performance information in the NSWPF GIPA dashboard for 2018/19 as part of Phase 1 of this follow up audit. This analysis is dealt with at Part 4.4 of this report.

In conducting Phase 1 of the follow up audit, the IPC has reviewed:

- the recommendations made in the 2019 compliance report
- the draft SOPS and templates provided by the NSWPF during the 2018/2019 audit
- the information provided by the NSWPF to date in relation to the implementation of the recommendations made in the 2019 compliance report
- updated versions of the SOPS and templates provided by the NSWPF
- NSWPF's GIPA Act *Guidelines & Procedure* dated 31 October 2019

- the quarterly reports provided by the NSWPF to the IPC in response to the recommendations made in the 2019 compliance report, and
- NSWPF [GIPA Dashboard](#).

The findings of this report identify further opportunities for improvement and development of policies, templates and SOPs relevant to the NSWPF's GIPA process. A further 10 recommendations have been made resulting from the completion of Phase 1 of the follow up audit.

The IPC recognises the impact of COVID-19 on agencies generally and that in the coming months resources may be deployed to address new and immediate priorities. However, the current situation also highlights the importance of sound information management practices. The IPC remains available to assist the NSWPF as it implements the recommendations outlined in this report designed to assist it in complying with obligations under the GIPA Act.

NSW Police response to this compliance report

On 20 July 2020, the NSWPF provided a response to the draft report. NSWPF's response generally supported the recommendations made by the Information Commissioner in the Phase 1 report. NSWPF's response has informed the finalisation of the report and is referred to in the footnotes contained within this report.

In particular the IPC notes the NSWPF response to the recommendations made from this report in respect of recommendations 11(a), 15(a) and 19(a). The IPC welcomes the advice that the NSWPF will take steps to change its practice for the handling of internal reviews under the GIPA Act in line with the recommendations made and the requirements of the GIPA Act in response to recommendation 19(a). The IPC notes the response by NSWPF to recommendations 11(a) and 15(a) which it considers to be addressed. In the Phase 2 audit that is intended, the IPC will consider the practical application of these practices further at that time.

The IPC acknowledges that this follow up audit is point in time and is aware that the NSWPF are in the process of implementing a new case management system to support it in the receipt and management of GIPA access applications. Accordingly, the IPC recommends that in the implementation of this new case management system, that it implements the recommended changes in this report and where possible incorporates the recommendations into that system.

In undertaking Phase 2 of the follow up audit, the IPC will be able to assess the effectiveness of the implementation of these recommendations to the processing of its access applications.

3 Methodology

3.1 Review of SOPs, templates and guidelines

In addition to an assessment of NSWPF's overall performance in managing GIPA applications using annual reports, IPC compliance data and the NSWPF GIPA dashboard the IPC requested that the NSWPF provide the latest version of its SOPs, templates and guidelines relevant to the implementation of the recommendations made in the 2019 compliance report for review.

In responding to this request, the NSWPF advised that it is in the process of building a new platform for the lodgement of an access application and, once in place, this will necessitate the drafting of new SOPs as automation is being built into the new platform. In its response to the draft report NSWPF advised that the platform is due to be launched on 28 July 2020. NSWPF noted that it would take forward relevant recommendations made in this audit and ensure alignment with the new platform in its response to the recommendations. This is relevant to recommendations 3(a), 5(a), 6(a) and 6(b) and 19(a).

The IPC acknowledges that the SOPs, templates and policy documents are working documents which will be subject to ongoing review and development. Although the findings and recommendations are made with regard to the specific documents provided by the NSWPF to the IPC for the purposes of Phase 1 of this follow up audit, they will also be relevant to the future review or development of SOPs, templates and policy documents relating to the GIPA process.

3.2 Consideration of quarterly reports

In response to the IPC recommendation the NSWPF provided the IPC with quarterly reports commencing on 14 May 2019 with the latest report being provided in February 2020 for the period 1 October 2019 – 31 December 2019.

3.3 Assessment criteria

The IPC assessed NSWPF's compliance with the GIPA Act against the recommendations made in the 2019 compliance report.

3.4 Conduct of analysis

This report finalises Phase 1 of the follow up audit and include specific comments, findings and recommendations to assist NSWPF with compliance with the GIPA Act in the context of the application and development of policies, templates and SOPs relevant to the GIPA process.

4 Acknowledgments

The IPC appreciates the assistance and co-operation provided by the NSWPF and its representatives during Phase 1 of this follow up audit.

5 Review of prior report recommendations

Phase 1 of the audit considered the following recommendations made in the 2019 compliance report to the extent that they relate to the review or development of SOPs, templates or systems: recommendations 3-12, 13, 15, 19, 20 and 21.

This paper-based audit considers the implementation of these recommendations with regard to the information provided to the IPC by the NSWPF, as well as the relevant legislative requirements of the GIPA Act.

5.1 GIPA applications manual

The 2019 compliance report found that the NSWPF had SOPs in place relating to the GIPA process but that improvements were required. The NSWPF advised that new SOPs were in development and would be completed in 2019.

The 2019 compliance report made the following recommendations:¹

April 2019 compliance report – Comments, findings and recommendations on GIPA applications manual

Recommendation 3: NSWPF prioritise completion of the SOP dealing with valid applications by 30 April 2019. This should include the delivery of internal training to ensure common understanding of the application of the SOP.

Recommendation 4: NSWPF remove the requirement (as currently outlined on the website and in the draft SOPs) that for an access application to be valid it requires a postal address in Australia. In reviewing these requirements, NSWPF should also consider the effect of any legislative amendments which came into effect on and from 28 November 2018. This should be completed by 12 April 2019.

In June 2019, the NSWPF advised that the SOPs for dealing with valid applications were in place and that training had been delivered in January/February 2019 for new staff. The NSWPF also advised that the website had been updated to no longer state that there is a requirement for a postal address in order for an access application to be valid. The NSWPF also advised that the effect of the recent legislative amendments had been incorporated into the SOPs developed to date.

The IPC's assessment of the part of the SOPs relating to invalid applications concluded that the SOPs set out:

- The requirements of section 41 (How to make an access application) of the GIPA Act
- The process for responding to an invalid access application
- The process for dealing with invalid access applications that subsequently meet the validity requirements.

However, the SOPs do not set out the process for acknowledging receipt of a valid access application and make no reference to section 51 (Initial decision as to validity of application) or section 52 (Agency assistance with invalid applications) of the GIPA Act which set out important provisions relating to the procedural steps to be taken when an access application is received.

¹ Unless otherwise stated, any references in this report to recommendations made in the 2019 compliance report are to be taken as references to the broader audit recommendations as summarised in Part 6.2 of the 2019 compliance report.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 3 has been implemented. The NSWPF has developed a SOP dealing with valid applications and has advised that training has been delivered on this SOP. However, on review further action has been identified in Recommendation 3(a) below that would assist the NSWPF to more comprehensively meet the requirements under the GIPA Act when dealing with valid applications.²

Recommendation 4 has been implemented. The NSWPF access to information webpage and SOPs have been updated to state that a postal or email address is required to satisfy the requirements for a valid access application. No follow up action has been identified in this audit.

Recommendation 3(a): The SOPs would benefit from the inclusion of a section dealing with the process for acknowledging receipt of valid access applications taking into account the provisions in sections 51 and 52 of the GIPA Act. The NSWPF is encouraged to continue to review and develop its website and SOPs on a regular basis to ensure that they contain information that is consistent with the legislative requirements of the GIPA Act.

5.2 GIPA templates

The 2019 compliance report noted that the NSWPF had templates in place for ‘Communication with applicant’ and ‘Notice of decision’ and identified some inadequacies in relation to compliance with section 126 of the GIPA Act which sets out the specific requirements for notices given under the GIPA Act.

The 2019 compliance report made the following recommendations:

April 2019 compliance report – Comments, findings and recommendations on GIPA templates

Recommendation 5: NSWPF include the contact details of an officer to whom inquiries can be directed in connection with the decision in compliance with section 126 of the GIPA Act.

Recommendation 6: In conjunction with the finalisation of its templates and SOPs, NSWPF review all templates and SOPs to ensure compliance with sections 61 and 126 of the GIPA Act. This should occur by 30 April 2019.

A review has been undertaken of the template notices of decision that the NSWPF provided to the IPC for the purposes of this follow up audit.

Contact details as required under section 126(1)(d) of the GIPA Act

In June 2019, the NSWPF advised that contact details had been included in the templates and made available to staff for use on the intranet.

The invalidity and deemed refusal template notices of decision include the following statement:

If you have any enquiries in relation to this decision, please contact [position title] on [telephone number].

² To assist in understanding the context of the further recommendations made, the follow up recommendations will be enumerated consistent with the numbering used in Part 6.2 of the 2019 compliance report with a letter in parenthesis after the recommendation.

It appears that the name of the relevant contact officer is not provided when these templates are used. The other template notices of decision each state the same contact telephone number and a section to be filled in to include the first initial, surname and electronic signature of the author.

Review of templates and SOPs for compliance with sections 61 and 126 of the GIPA Act

The NSWPF advised that it had reviewed all templates and ensured they were compliant with sections 61 and 126 of the GIPA Act. The NSWPF advised that decision-making guidance is facilitated by templates decision notices, amongst other mechanisms, and that the general framework for decision-making is yet to be drafted for inclusion in the SOPs.

The templates provided by the NSWPF include the information required by section 126 of the GIPA Act. However, the IPC takes the opportunity to draw NSWPF's attention to the particulars that are included in its templates relevant to the timing of when a notice of decision is considered to be received under the GIPA Act. This is particularly relevant to section 126(2) of the GIPA Act and therefore as NSWPF progresses to implement new systems it is encouraged to consider whether the information in any template notices that detail review rights are consistent with the provisions of the GIPA Act.

It is noted that the NSWPF has not provided the IPC with any template notices relevant to its process for dealing with applications where the NSWPF identifies that dealing with the application would require an unreasonable and substantial diversion of the agency's resources under section 60 of the GIPA Act. If such templates exist, the NSWPF should ensure that it satisfies the requirements of section 126 of the GIPA Act.

Section 61 of the GIPA Act sets out additional requirements where the notice of decision relates to a decision to refuse to provide access to information because there is an overriding public interest against disclosure of the information.

A decision on whether there is an overriding public interest against disclosure of information must be made by balancing the public interest factors for and against disclosure of the particular information requested, unless there is a conclusive presumption of an overriding public interest against disclosure of the requested information. The use of template notices of decision that include template wording relating to the assessment of particular public interest considerations, such as whether disclosure may prejudice an ongoing investigation or court proceedings, must be approached with caution to ensure that the reasons for decision provided in response to each access application are based on consideration of the specific information sought and findings on any material questions of fact underlying the assessment of relevant public interest considerations.

Decisions to refuse to deal with an access application under section 60 of the GIPA Act are also discretionary in nature and therefore the use of templates setting out reasons for refusing to deal with an application should also be approached with caution. Templates can act as a useful tool and resource for decision makers, however, these must be supported with training and guidance to ensure that any decision adequately meets the requirement of the GIPA Act and is specific to the circumstances of an individual application and not generic.

The SOPs provided by the NSWPF for this follow up audit refer to information that falls within the description 'Under Investigation/Before Court' as being 'excluded information'. However, 'excluded information' has a particular meaning under Schedule 2 of the GIPA Act which identifies functions in relation to specified agencies as 'excluded information' in relation to which it is to be conclusively presumed that there is an overriding public interest against disclosure (unless the agency consents to disclosure).

Section 43 of the GIPA Act prevents an access application from being made to an agency for excluded information of the agency. The SOPs may therefore be read as suggesting that information that falls within the description 'Under Investigation/Before Court' is prima facie excluded information under Schedule 2 which is not the case.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 5 has been partially implemented. Certain template notices do not include the complete contact details of an officer of the agency to whom inquiries can be directed in connection with the agency's decision or other action relevant to the notification (name of officer and how they can be contacted). Follow up action has been identified in Recommendation 5(a) below.

Recommendation 6 has been partially implemented. During the previous audit, the NSWPF provided the IPC with a copy of a draft SOP relating to notices of decision, however it appears that this SOP has not yet been finalised. Follow up action has been identified in Recommendations 6(a) and (b) below.

Recommendation 5(a): The NSWPF should review and update all templates notices to include the contact details of an officer to who inquiries can be directed in connection with the notice in compliance with section 126 of the GIPA Act.

Recommendation 6(a): The NSWPF should develop a SOP that refers to the requirements of section 61 and 126 of the GIPA Act. This will complement the templates and other mechanisms used by the NSWPF to ensure that staff responsible for drafting notices under the GIPA Act, including notices of decision, are aware of relevant legislative requirements.

Recommendation 6(b): The NSWPF should review its SOPs and templates to ensure that they reflect the requirements of the GIPA Act relating to balancing the public interest against disclosure of information and the discretionary nature of section 60 of the GIPA Act. Particular consideration should be given to templates and SOPs used where the information sought may relate to investigations or court proceedings.

5.3 GIPA search requirements

The 2019 compliance report noted that the NSWPF has multiple established records storage and retrieval systems. The 2019 compliance report found that the NSWPF did not have a formal process for the follow up of search requests or an escalation model in the event of a non-response. It recommended improvements to the following aspects of the search process:

- Identification of parameters of GIPA application and relevant business units
- Referral to and retrieval from business units, and
- Certification on return by officer conducting search.

The 2019 compliance report also identified a need to assist the search process through the identification of key search terms. The 2019 compliance report included the following recommendations:

April 2019 compliance report – Comments, findings and recommendations on GIPA search requirements

Recommendation 7: NSWPF provide further instruction regarding search terms and a copy of the access application when sending search requests. This should be implemented by 30 April 2019.³

Recommendation 8: NSWPF ensure that training is provided to staff regarding reasonable searches and the identification of appropriate business units within the NSWPF organisational structure. It is recommended that identification of key personnel (by role) is included into the SOP.⁴

Recommendation 9: NSWPF prioritise the development of a process by 30 April 2019 (for inclusion in the new SOPs) regarding the handling of search requests sent outside of PoliceLink Command. This may include:

- Recording and notifying a senior officer at the PAC/PD that a search request has been sent to the PAC/PD for actioning; and
- a formal and documented escalation process to assist staff when they do not receive a response from the PAC/PD to a search request.

When considering the issue of searches, NSWPF should have regard to the guidance issued by the Information Commissioner in the fact sheet [The role of principal officers and senior executives in supporting the objects of the GIPA Act](#).⁵

Recommendation 10: NSWPF prioritise by 30 April 2019, the development of a template for internal communication regarding the conduct of search requests (including any notification and escalation process) as outlined above.⁶

Recommendation 11: NSWPF prioritise by 30 April 2019 the development of a template for internal communication regarding the completion of searches and include a certification template to better identify the: searches conducted, search terms applied, systems searched, information identified, and where relevant, specify the factors for and against disclosure for consideration by the decisions maker. It is also recommended that the certification is completed and signed by the officer conducting the search prior to return to the GIPA access application decision maker.⁷

Recommendation 12: NSWPF develop by 30 April 2019 a documented protocol for the escalation and management of non-response to search requests. Ideally, senior officers responsible for information access in PACs/PDs should be provided with a report of all instances of non-response to a search request on no less than a monthly basis.⁸

³ This recommendation aligns with recommendation 1 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 25 of the 2019 compliance report).

⁴ This recommendation aligns with recommendation 4 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 26 of the 2019 compliance report).

⁵ This recommendation aligns with recommendation 6 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 26 of the 2019 compliance report).

⁶ This recommendation aligns with recommendation 2 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 25 of the 2019 compliance report).

⁷ This recommendation aligns with recommendation 3 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 25 of the 2019 compliance report).

⁸ This recommendation aligns with recommendation 8 in relation to the IPC's consideration of the complaint aspect of the 2019 compliance report (see page 26 of the 2019 compliance report).

Recommendation 7

NSWPF has advised that it provides a copy of the GIPA access application as well as instructions to external units with search terms when making a request for searches to be undertaken for information responsive to each access application. The NSWPF also advised that Infolink personnel are available to support external units regarding search terms.

The SOPS set out the procedure for sending a 'Trace Request' when it is identified that some or all of the information requested cannot be sourced within the InfoLink unit. This procedure includes providing a copy of the GIPA application or refined request with the trace request.

The NSWPF has also provided the IPC with a copy of a template 'PACPD Trace Request' which includes a statement that a copy of the GIPA application (and any refinement agreement) is attached. It also refers to a GIPA Instruction Sheet being attached.

The SOPs and template Trace Request do not include reference to search terms. It is therefore unclear how and when guidance in relation to search terms is provided.

Further consideration will be given to the practical implementation of Recommendation 7 during the onsite audit forming Phase 2 of this follow up audit.

Recommendation 8

The SOPs include a link to the NSWPF organisational chart and a key personnel contact list. The NSWPF's GIPA Act *Guidelines & Procedure* document also discusses the commands and business units.

Further consideration will be given to the implementation of Recommendation 8 during Phase 2 of this follow up audit.

Recommendation 9

The SOPs provided by the NSWPF include the process for sending trace requests outside of the InfoLink unit. This includes a process for misdirected traces and traces transferred to another area, as well as a trace follow up and escalation process.

Further consideration will be given to the practical implementation of the process described in Recommendation 9 during the onsite audit forming Phase 2 of this follow up audit.

Recommendation 10

The NSWPF has also provided the IPC with a copy of templates to send a search request and to follow up an overdue search request. The template relating to following up an overdue search request includes advice that the matter will be escalated if no response is received.

Recommendation 11

The NSWPF continues to use a GIPA Instruction Sheet and checklist to record completed searches. This includes a 'Completing Officer Declaration' to be signed and dated by the officer that completes the searches.

The NSWPF's GIPA Act *Guidelines & Procedure* document also includes a section on 'Certifying work completed in response to a search request'.

The SOPs also include reference to the requirement for a completed GIPA Instruction Sheet to be returned to the InfoLink unit when searches have been completed by other business units.

The NSWPF provided the IPC with two versions of the GIPA Instruction Sheet in response to the IPC's enquiries relating to this follow up. It is noted that the version attached to the NSWPF's GIPA Act *Guidelines & Procedure* is dated August 2018 and appears to have been superseded by a version dated January 2020. The NSWPF should ensure that the current version of the GIPA Instruction Sheet is being used.

The January 2020 version of the GIPA Instruction Sheet explains that if the certifying officer has any concerns / objections about the release of information, a brief report should be provided to assist with the decision of the Information Review officer. The GIPA Instruction Sheet also includes a section to be completed to provide details of the electronic and paper-based systems searched to respond to the application. This content appears to be the same as the August 2018 version. It also appears that the certification template has not been updated so that it better identifies the search terms applied, information identified and, where relevant, specify the factors for and against disclosure for consideration by the decision maker.

The NSWPF's GIPA Act *Guidelines & Procedure* provide additional instructions to officers in relation to completing the GIPA Instruction Sheet, including additional information about providing details of search terms used and objecting to release of information.

However, the *Guidelines & Procedure* are not referenced in the GIPA Instruction Sheet or the template trace request and it is unclear when and to whom the NSWPF's GIPA Act *Guidelines & Procedure* are provided. Further, as noted above, the GIPA Instruction Sheet attached to the *Guidelines & Procedure* appears to be out of date.

It therefore appears that Recommendation 11 has been partially implemented.

Recommendation 12

The NSWPF has shown a commitment to developing a more robust process regarding the handling of search requests sent outside of the InfoLink unit. The SOPs provided by NSWPF in November 2019 include a 'Trace' (request for documents) follow up and escalation process.

The *Guidelines & Procedure* include a statement that it is the expectation of the NSW Police Force executive that all staff support the NSW Police Force GIPA Act function and diligently undertake all tasks requested of them to achieve this. The *Guidelines* also identifies the expectations and responsibilities of key personnel in relation to resolving escalated trace requests.

The NSWPF has advised that to timely support compliance by business units outside of InfoLink for the return of search requests, the NSWPF has developed a quarterly report that records the performance of all NSWPF units.

The NSWPF advised that each quarter the report is sent to the office of the Commissioner, Deputy Commissioners and Assistant Commissioners for appropriate action where required.

The NSWPF provided the IPC with an example of the format in which the information will be reported. Although the NSWPF has not provided the IPC with a copy of any of the reports that have been distributed internally pursuant to this process, the IPC accepts that the NSWPF has taken the steps necessary to give effect to this recommendation.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 7 has been implemented in the NSWPF's SOPs and templates. The practical implementation of this recommendation will be considered during Phase 2 of this follow up audit.

Recommendation 8 has been implemented in relation to the inclusion of the identification of key personnel by role into the SOP. The extent of the practical implementation of the training aspect of Recommendation 8 will be considered in Phase 2 of this follow up audit.

Recommendation 9 has been implemented in the NSWPF's SOPs. The practical implementation of this recommendation will be considered during Phase 2 of this follow up audit.

Recommendation 10 has been implemented by the development of templates.

Recommendation 11 has been partially implemented. The NSWPF has developed the NSWPF's GIPA Act *Guidelines & Procedure* document. However, it is unclear when and to whom this document is provided. Follow up action has been identified in Recommendation 11(a) below.

Recommendation 12 has been partially implemented.

The NSWPF has developed a protocol for the escalation and management of non-response to search requests. The NSWPF has also developed a process to report instances of non-responses to search requests to senior officers. However, the NSWPF has not confirmed whether this reporting process is being used in practice or explained why it has determined that quarterly reporting is appropriate rather than monthly reporting as recommended in the 2019 compliance report. Follow up action has been identified in Recommendation 12(a) below.

Recommendation 11(a): The NSWPF should ensure that any additional information relevant to the completion of a GIPA Instruction Sheet searches certification is provided to the relevant officers at the time that the request for searches is sent. The search template should be further modified to reflect the search terms applied, information identified and where relevant specify the factors for and against disclosure for consideration by the decision maker.⁹

Recommendation 12(a): The NSWPF should provide the IPC with a further update on the implementation of Recommendation 12 by 30 September 2020, including details of whether the process for overdue searches to senior officers is being used in practice and how it has determined the appropriate frequency for such reporting.¹⁰

5.4 GIPA case management

The 2019 compliance report found that although the NSWPF was generally acknowledging receipt of access applications within the statutory timeframe under section 51 of the GIPA Act, the average timeframe from receipt to finalisation was outside of the 20 working day decision period (section 57(1)). The NSWPF advised that the InfoLink Unit was:

⁹ NSWPF response to the draft report advised that this recommendation is addressed by reference to its GIPA Act Guideline and Procedures manual which is provided as a link with all information search requests issued within the Agency.

¹⁰ NSWPF provided an update on implementation of this recommendation which has been delayed for implementation as a result of COVID -19.

- transitioning from a paper-based system to a fully electronic system,
- changing workflows to streamline the process of handling access applications.

In summary, the 2019 compliance report found that in December 2018, NSWPF had 1009 access applications and of these, 684 had passed the due date. In the audit sample 68% of applications were not decided within time in accordance with the legislation. The applications awaiting a late decision represented 94% of the applications on hand. The data provided during the course of the 2019 audit demonstrated a significant deterioration in the performance as reported by NSWPF in comparison to 2017/18. NSWPF advised that the deterioration and backlog of applications was attributable to the high volume of access applications it receives and a reduction in the number of staff in key positions. NSWPF advised that additional new staff would commence at the end of January 2019.

The 2019 compliance report noted a rapid deterioration in performance which demonstrated the acute need to implement systems to identify, monitor, report and escalate GIPA Act compliance generally.

The 2019 compliance report included the following recommendations:

April 2019 compliance report – Comments, findings and recommendations on GIPA case management

Recommendation 13: NSWPF provide the IPC with a report regarding its management of GIPA applications and resource application on a quarterly basis commencing 1 May 2019. That report should reflect existing annual reporting requirements and current and proposed resources applied to the GIPA Act functions.

In 2018/19, valid access applications received by NSWPF accounted for approximately 37% of all valid GIPA applications received across NSW government agencies.¹¹ This is a slight decrease on the percentage in 2017/2018 which was 38%.

Based on the GIPA dashboard, NSWPF decided 73% of access applications within the statutory timeframe during 2018/2019. This is significantly lower than the sector wide average which was 95%. This was also a significant deterioration from the 2017/18 reporting period when 82% of applications were decided within the statutory timeframe by the NSWPF, and represents a continued deterioration in compliance with statutory timeframes by the NSWPF since 2016.¹² It is noted that this deterioration in compliance was in the context of a decrease in the number of access applications received by the NSWPF.¹³

The data provided in the quarterly reports commencing on 14 May 2019 with the latest report being provided in February 2020 for the period 1 October 2019 – 31 December 2019 regarding timeliness of decision-making on access applications is summarised as follows:

¹¹ The number of valid access applications received by all agencies for the period of 2018/2019 was 13881. The number of valid access applications received by NSWPF for the period of 2018/2019 was 5172.

¹² According to NSWPF GIPA dashboard, in 2015/16 94% of access applications were decided within the statutory timeframe. This decreased to 84% in 2016/17; 82% in 2017/18; and 73% in 2018/19.

¹³ The number of applications received by the NSW Police Force declined by 12% in 2018/19.

| Reporting period | Number of applications decided within statutory timeframe ¹⁴ | Number of deemed refusals |
|--------------------------|---|---------------------------|
| 01/01/2019 to 31/03/2019 | 888 (70%) | 372 (30%) |
| 01/04/2019 to 30/06/2019 | 1461 (80%) | 356 (20%) |
| 01/07/2019 to 30/09/2019 | 1617 (85%) | 288 (15%) |
| 01/10/2019 to 31/12/2019 | 1481 (97%) | 42 (3%) |

This data demonstrates a significant and continuous improvement in compliance with the statutory timeframes for decision-making on access applications. The NSWPF has also advised that it has addressed the backlog of applications that were awaiting a decision as advised in the 2019 compliance report.

It therefore appears that the additional resourcing in place since January 2019, as well as the commitment shown by NSWPF to respond to the 2019 compliance audit recommendations, has positively impacted the NSWPF's compliance with statutory timeframes under the GIPA Act. The ability of the NSWPF to continue to improve compliance with the statutory requirement under the GIPA Act to ensure timely decision-making requires adequate and continued resourcing, as well as continuing agency-wide commitment to promoting and monitoring compliance with the GIPA Act. The NSWPF should continue the work that it has undertaken to improve its timeliness and in doing so have regard for the volume of applications it receives and the resourcing that would be required to support that going forward.

The NSWPF has not provided the IPC with any data relating to the timeliness of decision-making during 2020 in relation to this audit. However, the reporting of data relevant to the 2019/20 reporting period for the GIPA Dashboard is not due to be completed by NSWPF until after the finalisation of its 2019/20 Annual Report. In this regard I note that the timeframes for the finalisation of Annual Reports has been extended as a result of the COVID- 19 pandemic. Consequently, this means that the 2019/20 annual report data may not be available until 2021. Accordingly, given the circumstances the IPC will review this data and make further comment on the timeliness of decision-making during Phase 2 of this follow up audit.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 13 has been implemented. Since May 2019, the NSWPF has provided the IPC with four quarterly reports regarding its management of GIPA applications and resource application. No specific follow up recommendations have been identified in this audit.

However, the IPC will ask the NSWFP to provide data relating to the timeliness of decision-making during 2020 when undertaking Phase 2 of the follow up compliance audit so that a further assessment of timeliness can be undertaken at that time.

¹⁴ This includes decisions made under an extended timeframe as permitted by section 57 of the GIPA Act.

5.5 Scope and assistance

The 2019 compliance report found that the records provided by NSWPF demonstrated that staff were generally engaging with access applicants and other units within NSWPF to ensure that follow up requests for information are made. However, there was no guidance on best practice for capturing the details of file notes and telephone discussions.

Relevant to Phase 1 of the follow up audit, the 2019 compliance report made the following recommendation:

April 2019 compliance report – Comments, findings and recommendations on scope and assistance

Recommendation 15: NSWPF develop internal guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants that aligns with the guidance provided under the [NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government](#) and [Effective Complaint Handling Guidelines](#). The internal guidance be included into its SOP training for all staff to ensure consistency of approach and promote compliance with legislative timeframes.

The SOPs provided by the NSWPF in November 2019 include a section relating to adding file notes to the AAMS database.

This section explains when and how to add a file note to the database and includes one example of the type of information that should be included when completing the subject and description of the action taken. It does not include any further guidance on the best practice of the format and content of file notes, telephone discussions and contact with applicants, or refer to the [NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government](#) and [Effective Complaint Handling Guidelines](#).

2020 follow up findings and recommendations (Phase 1)

Findings: [Recommendation 15](#) has been partially implemented. The SOPs now include further details on the creation of file notes. However, it appears that the recommendation to develop internal guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants is not evident from the SOP's that the IPC reviewed. Accordingly, further follow up action has been identified in [Recommendation 15\(a\)](#) below.

Recommendation 15(a): NSWPF review and update the SOP on file notes to include guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants that aligns with the guidance provided under the [NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government](#) and [Effective Complaint Handling Guidelines](#).¹⁵

¹⁵ NSWPF response to the draft report advised that its system used to record file notes, and the SOPs provide guidance on its use, adequately address expectations around the format and content of file notes for the purpose of recording interactions with the public in connection with a GIPA application.

5.6 Internal reviews

The 2019 compliance report found that the NSWPF had demonstrated substantial non-compliance with the statutory timeframes provided under the GIPA Act in respect of internal reviews. Although the NSWPF was generally acknowledging receipt of internal review applications within the statutory timeframe under section 83(3) of the GIPA Act, the average timeframe from receipt to finalisation was outside of the 15 working day decision period as stated in section 86 of the GIPA Act.

The 2019 compliance report included the following recommendations:

April 2019 compliance report – Comments, findings and recommendations on internal reviews

Recommendation 19: NSWPF issue correspondence to applicants and advise that in circumstances of an internal review which is not made within 15 days the original decision may be reviewed by the Information Commissioner or NSW Civil and Administrative Tribunal (NCAT). The correspondence should also include a refund of any fee paid for the review. The new SOP should be updated to reflect these legislative requirements. This action should be undertaken as a priority and be implemented by 30 April 2019.

Recommendation 20: NSWPF provide the IPC with an update regarding the number of matters awaiting internal review and advise of procedures to refund fees in accordance with section 86(5) of the GIPA Act on a quarterly basis commencing 1 May 2019.

The 2019 compliance report noted that at the time of the audit, the NSWPF had 22 internal reviews awaiting a decision, twenty of which related to a deemed refusal of the original access application.

The NSWPF has provided the IPC with an update regarding the number of matters awaiting internal review in its quarterly reports. The information provided by the NSWPF can be summarised as follows:

| Date of reporting | Number of internal review applications awaiting review |
|-------------------|--|
| 6 May 2019 | 26 |
| 19 July 2019 | 35 |
| 18 October 2019 | 19 |

The February 2020 NSWPF quarterly report did not contain the relevant data in this regard.

It is unclear from the data provided by the NSWPF whether the internal review applications that were awaiting a decision were within the statutory decision-making period for internal reviews or were applications for internal review following a deemed refusal of the original access application.

Further consideration will be given to the timeliness of decision-making in relation to internal review applications during Phase 2 of the follow up audit.

The SOPs refer to the statutory processing timeframe for internal review applications under section 86 of the GIPA Act.

The NSWPF has provided the IPC with a copy of a template notice of decision in relation to a deemed internal review decision which appropriately includes:

- confirmation that the application fee, if applicable, will be refunded
- details of review rights to the Information Commissioner or NCAT.

The SOP describes creation of a report from the AAMs database to show which internal review applications have become deemed decisions under section 86(5). The SOP also sets out the process for arranging the refund of the internal review application fee and notifying the applicant of the deemed decision using the deemed decision template. However, this process does not appear to include the timeframe within which these steps should be taken after an internal review decision is deemed to have been made under section 86(5). As noted in the 2019 compliance report, an access applicant's rights can be extinguished through the expiration of time.

In relation to the process for the refund of fees, NSWPF has advised:

... an AAMS report is generated daily to identify any Internal reviews that have a due date of the previous working day and are still outstanding. For those that are identified, a notice is sent to the applicant advising that because the internal review has not been completed by the due date, the NSWPF is deemed to have made the original decision again. ... The notice outlines the applicant's review rights and states that a refund of the application fee will be processed. Following this, the process of issuing a refund is commenced.

The NSWPF is encouraged to include guidance in the SOP to explain expectations relating to the timing of the issuance of a notice of decision and the arrangement of refund when a decision is deemed to have been made under section 86(5).

The template notice of decision also states:

Under Section 86 of the Act, if an agency has not decided an application for internal review by the due date, the agency is deemed to have made the original decision that is under review again. This does not mean your application will not be processed. The NSW Police Force will continue to work on your application and you will receive a late notice of decision at the earliest opportunity.

This is also reflected in the SOP which provides that if an internal review application is deemed upheld under section 86(5), "The InfoLink Unit will continue to process the internal review and provide a decision to the applicant as soon as possible". In exercising external review functions, the IPC has provided recommendations to the Agency about the operation of section 86(5).

As explained in the 2019 compliance report, the GIPA Act does not allow an agency to make a further decision on an internal review application after it has been deemed to uphold its original decision under section 86(5). This is because:

- Section 86(1) of the GIPA Act provides that an agency must make its decision on an internal review and give the applicant notice of the agency's decision within 15 working days (the review period) after the agency receives the application for internal review.
- Section 86(5) of the GIPA Act provides that if a decision on the internal review is not made within the review period, the agency is deemed to have made that decision by making the original decision again, and the applicant for review is entitled to a refund of any fee paid to the agency for the review.
- There are two exceptions which allow the agency to make a decision after the review period (15 working days) has expired: i) where an extension is required for consultation or ii) by agreement with the applicant: sections 86(2) and 86(4) of the GIPA Act.

- Section 86(5) of the GIPA Act is to be contrasted with section 63(2) of the GIPA Act which deals with initial applications and provides that the deemed refusal to deal with an application does not prevent the agency from continuing to deal with the application and subsequently deciding the application and giving notice of its decision (a late decision) on the application. Accordingly, agencies can make a 'late decision' in respect of an access application, but section 86(5) provides a deeming provision and prevents the making of a late decision on internal review.

Noting that the timeframe for an access applicant to seek review of a deemed internal review decision commences on the day after the decision becomes deemed and that it is not open to the NSWPF to make a late internal review decision, the NSWPF should issue the notice of deemed decision and information about the refund of any internal review application fee paid as soon as possible after the decision becomes deemed.¹⁶ The NSWPF should also ensure that its template notice of decision accurately reflects when the review period in relation to a deemed internal review decision commences.

The NSWPF is also encouraged to ensure that when acknowledging receipt of a valid internal review application in accordance with 83(3) of the GIPA Act internal review applicants are provided with information about review and other rights specific to internal reviews.

Consideration will be given to the practical implementation of Recommendation 19 during Phase 2 of this follow up audit.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 19 has been partially implemented. The SOPs and templates relating to deemed internal review decisions have been updated in relation to refunds of the application fee and review rights. However, the SOPs and templates continue to provide that a late decision can be made on a deemed internal review decision. Further, the SOPs do not set expectations in relation to the timing of the issuance of a notice of decision and the arrangement of refund when a decision is deemed to have been made under section 86(5). Follow up action has been identified in Recommendation 19(a) below.

Recommendation 20 has been partially implemented. The most recent data from NSWPF did not include data about the number of matters awaiting internal review since October 2019.

Recommendation 19(a): The NSWPF should remove information relating to the issuance of late decisions on deemed internal review decisions within its SOPs and templates by no later than 30 September 2020. The NSWPF should update the SOPs to include guidance on the expectations in relation to the timing of the issuance of a notice of decision and the arrangement of refund when a decision is deemed to have been made under section 86(5). The NSWPF should ensure that relevant templates provide information about when the review period commences in circumstances where an internal review application is not decided within the statutory timeframe.¹⁷

¹⁶ Section 63 GIPA Act

¹⁷ In response to the Phase 1 draft report, NSWPF has advised that it will change its practice with regards to overdue internal review applications. NSWPF has also advised that it will give consideration to including expectations about the timing of notices relating to overdue internal review applications in future SOPs drafted to align with the new online platform, although it submits this is already entrenched as part of the current daily duties of InfoLink.

2020 follow up findings and recommendations (Phase 1)

Recommendation 20(a): The NSWPF should provide the IPC with the following information about its internal review decision-making for each quarter during 2019/20 by 31 July 2020:

- how many internal review applications were received?
- how many of these applications related to a deemed refusal of the original access application?
- how many of these applications were not decided within the statutory timeframe?

The information provided will be assessed during Phase 2 of this follow up audit to ensure that the NSWPF has given practical effect to the recommendations made in this phase of the audit.¹⁸

5.7 Process following recommendations from Information Commissioner

The 2019 compliance report noted that the capacity for an agency to monitor and measure its responsiveness to section 93 recommendations assists an agency to understand its overall performance and can assist to identify areas where systemic issues may require attention, such as where recommendations are made as a result of deemed refusal decisions. This in turn assists an agency to identify appropriate measures for addressing such issues.

The 2019 compliance report found that the NSWPF did not have in place a system to monitor and measure its responsiveness to section 93 recommendations made by the Information Commissioner under the GIPA Act in conducting an external review of decisions made by NSWPF.

The 2019 compliance report included the following recommendations:

April 2019 compliance report – Comments, findings and recommendations on process following recommendations from Information Commissioner

Recommendation 21: NSWPF update the draft SOPs and its case management systems to include ‘Recommendations from IPC’ as this will encompass section 93 recommendations together with other recommendations as listed in Part 5, Division 3 of the GIPA Act – Review by Information Commissioner. This should include the capacity for reporting against the number of recommendations made and the agency response.

The NSWPF has advised the IPC that this recommendation has been implemented and is addressed in a component of the SOPs called “*Advisory & Education*”.

The IPC has reviewed the SOPs provided by the NSWPF to the IPC. Although parts of the SOPs include reference to “*Advisory & Education*”, these references do not appear alongside information that addresses Recommendation 21. Further, there appears to be no reference to section 93 recommendations in the SOPs.

The quarterly reports provided by NSWPF to the IPC include data relating to the number of applications reviewed under Part 5 of the GIPA Act by type of review and outcome. However, it does not include data about the NSWPF’s response to recommendations made under section 93 of the GIPA Act. It is therefore unclear whether the NSWPF has taken steps to update its SOPs and case management systems to monitor and measure its responsiveness to section 93 recommendations.

¹⁸ NSWPF provided a response addressing the elements of the recommendations by the required date.

2020 follow up findings and recommendations (Phase 1)

Findings: Recommendation 21 has not been implemented. Follow up action has been identified in Recommendation 21(a) below.

Recommendation 21(a): NSWPF update the draft SOPs and ensure that in its new case management systems there is the capacity to include 'Recommendations from IPC' made under section 93 of the GIPA Act together with other recommendations as listed in Part 5, Division 3 of the GIPA Act – Review by Information Commissioner. This should include the capacity for standard reporting against the number of recommendations made and the agency response.¹⁹

¹⁹ In response to the draft Phase 1 report, the NSWPF has advised that InfoLink SOPs include instructions about how to record section 93 recommendations and outcomes, and that it does report internally on IPC recommendations made and the NSWPF response. However, NSWPF has not explained whether copies of these SOPs have been made available to the IPC. Further consideration will be given to the implementation of Recommendation 21(a) during Phase 2 of the audit.

6 Conclusions and recommendations

6.1 Conclusions

This audit was informed by:

- A review of the information provided by the NSWPF relating to its systems, policies, templates and SOPs
- A review of the NSWPF GIPA Dashboard 2018/19
- IPC data and information in conducting external reviews
- NSWPF data reported in respect of annual reporting requirements and data provided as a consequence of the 2019 compliance report.

In summary, this audit has identified:

- a commitment to implementing changes to fulfil the requirements of the GIPA Act and implement the recommendations made by the IPC in the 2019 compliance report
- an overall decline in compliance with statutory decision-making timeframes during the 2018/19 reporting period
- an improvement in compliance with statutory decision-making timeframes in relation to original access applications based on data provided by NSWPF relevant to January to December 2019
- overall improvements in compliance with statutory timeframes demonstrate a responsiveness to NSWPF's commitment to enhanced processes, policies and resources
- overall improved processes to support compliance with statutory timeframes in respect of search requirements
- instances where further steps are necessary to give full effect to the recommendations made in the 2019 compliance report
- further opportunities for the NSWPF in the review and development of its systems, SOPs, templates and procedures relevant to its GIPA process to assist in the achievement of compliance in respect of its GIPA functions.

6.2 Recommendations and monitoring – Phase 1

The cooperation of the NSWPF during Phase 1 of this audit is appreciated and the findings recognise that the NSWPF has demonstrated a willingness to take steps to implement the recommendations made in the 2019 compliance report relating to its systems, SOPs, templates and processes.

This report makes additional recommendations to assist the NSWPF in improving its compliance with the requirements of the GIPA Act.

Based on the findings of Phase 1 of this follow up audit, it is recommended that the NSWPF implement the following recommendations within the timeframes specified (as applicable) and provide a report to the Information Commissioner on its progress of implementation by **5 October 2020**:

| Overview of 2020 follow up recommendations (Phase 1) | |
|--|--|
| Recommendation 3(a) | The SOPs would benefit from the inclusion of a section dealing with the process for acknowledging receipt of valid access applications taking into account the provisions in sections 51 and 52 of the GIPA Act. The NSWPF is encouraged to continue to review and develop its website and SOPs on a regular basis to ensure that they contain information that is consistent with the legislative requirements of the GIPA Act. |
| Recommendation 5(a) | The NSWPF should review and update all templates notices to include the contact details of an officer to who inquiries can be directed in connection with the notice in compliance with section 126 of the GIPA Act. |
| Recommendation 6(a) | The NSWPF should develop a SOP that refers to the requirements of section 61 and 126 of the GIPA Act. This will complement the templates and other mechanisms used by the NSWPF to ensure that staff responsible for drafting notices under the GIPA Act, including notices of decision, are aware of relevant legislative requirements. |
| Recommendation 6(b) | The NSWPF should review its SOPs and templates to ensure that they reflect the requirements of the GIPA Act relating to balancing the public interest against disclosure of information and the discretionary nature of section 60 of the GIPA Act. Particular consideration should be given to templates and SOPs used where the information sought may relate to investigations or court proceedings. |
| Recommendation 11(a) | The NSWPF should ensure that any additional information relevant to the completion of a GIPA Instruction Sheet searches certification is provided to the relevant officers at the time that the request for searches is sent. The search template should be further modified to reflect the search terms applied, information identified and where relevant specify the factors for and against disclosure for consideration by the decision maker. |
| Recommendation 12(a) | The NSWPF should provide the IPC with a further update on the implementation of Recommendation 12 by 30 September 2020, including details of whether the process for overdue searches to senior officers is being used in practice and how it has determined the appropriate frequency for such reporting. |
| Recommendation 15(a) | NSWPF review and update the SOP on file notes to include guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants that aligns with the guidance provided under the NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government and Effective Complaint Handling Guidelines . |
| Recommendation 19(a) | The NSWPF should remove information relating to the issuance of late decisions on deemed internal review decisions within its SOPs and templates by no later than 30 September 2020. The NSWPF should update the SOPs to include guidance on the expectations in relation to the timing of the issuance of a notice of decision and the arrangement of refund when a decision is deemed to have been made under section 86(5). The NSWPF should ensure that relevant templates provide information about when the review period commences in circumstances where an internal review application is not decided within the statutory timeframe. |

| | |
|-----------------------------|--|
| Recommendation 20(a) | <p>The NSWPF should provide the IPC with the following information about its internal review decision-making for each quarter during 2019/20 by 30 September 2020:</p> <ul style="list-style-type: none"> • how many internal review applications were received? • how many of these applications related to a deemed refusal of the original access application? • how many of these applications were not decided within the statutory timeframe? <p>The information provided will be assessed during Phase 2 of this follow up audit to ensure that the NSWPF has given practical effect to the recommendations made in this phase of the audit.</p> |
| Recommendation 21(a) | <p>NSWPF update the draft SOPs and ensure that in its new case management systems there is the capacity to include 'Recommendations from IPC' made under section 93 of the GIPA Act together with other recommendations as listed in Part 5, Division 3 of the GIPA Act – Review by Information Commissioner. This should include the capacity for standard reporting against the number of recommendations made and the agency response.</p> |

6.3 Monitoring

The IPC will continue to assist the NSWPF as it adopts these recommendations.

The IPC will review whether the NSWPF has implemented these recommendations during Phase 2 of this follow up audit.

Phase 2 of this audit will be conducted as soon as possible taking into account restrictions relating to the COVID-19 pandemic.

7 Audit chronology

| Date | Event |
|------------------|---|
| April 2019 | 2019 compliance report issued |
| 14 May 2019 | NSWPF provides quarterly report to the IPC. |
| 30 July 2019 | NSWPF provides quarterly report to the IPC. |
| 30 October 2019 | NSWPF provides quarterly report to the IPC. NSWPF advises the IPC that all recommendations made in the 2019 compliance report had been implemented. |
| 4 November 2019 | IPC requests the NSWPF to provide a full copy of the policies, procedures and processes relevant to the implementation of the 2019 audit recommendations. |
| 19 November 2019 | NSWPF provide a response to the request for a full copy of the policies, procedures and processes relevant to the implementation of the 2019 audit recommendations. |
| 12 February 2020 | IPC advises NSWPF of proposal for onsite audit to be conducted in May 2020. |
| 18 February 2020 | NSWPF provide additional statistical information relevant to timeliness during the period July-December 2019. |
| 25 February 2020 | NSWPF acknowledges that onsite audit will be conducted in May 2020 Quarterly report for the period 1 October – 31 December 2019 provided. |
| 26 February 2020 | IPC requests NSWPF to provide additional information relevant to the implementation of the 2019 audit recommendations relating to policies, procedures and processes. |
| 12 March 2020 | NSWPF provide additional information relating to policies, procedures and processes. |
| 17 April 2020 | IPC advises NSWPF of proposed two-part follow up audit due to COVID-19 pandemic restrictions |

| | |
|------------------------------|---|
| 22 April 2020 | NSWPF accepts proposal relating to two-part follow up audit |
| Late April 2020 to June 2020 | IPC review of policies, procedures and processes relevant to the implementation of the 2019 audit recommendations provided by NSWPF |
| 8 July 2020 | Draft Follow Up Compliance Report – Phase 1 provided to NSWPF. |
| 20 July 2020 | NSWPF response to draft Follow Up Compliance Report – Phase 1. |
| 31 July 2020 | NSWPF response to recommendations 12 (a) and 20(a) |
| 17 August 2020 | Provision of final Follow Up Compliance Report – NSWPF Commissioner |

8 Legislation

The following legislation is relevant to the conduct of this audit.

Government Information (Information Commissioner) Act 2009 – relevant sections

- Section 21 – Investigation of agency systems, policies and practices
- Section 24 – Report on compliance with Information Act

Government Information (Public Access) Act 2009 – relevant sections

- Section 9(3) – Access applications
- Section 17(g) – Role of the Information Commissioner
- Section 51 – Initial decision as to validity of application
- Section 52 – Agency assistance with invalid applications
- Section 53(2) – Searches for information held by agency
- Section 57 – Required period for deciding application
- Section 61 – Notice of decision to refuse to provide access
- Section 63(2) – Deemed refusal if application not decided within time
- Section 84 – Conduct of internal review
- Sections 86(1), (2) and (5) – Required period for determination of internal review
- Section 93 – Recommendation for reconsideration of matter by agency
- Section 126 – Requirements for notices given by agencies