



Automated decision-making, digital government and preserving information access rights – for citizens

This Fact Sheet provides advice to citizens seeking access to government information.

Increasingly NSW government information is held in digital form, likewise decision-making and services are increasingly automated. This has implications for how governments can improve outcomes for citizens seeking access to government information.

The object of the *Government Information (Public Access) Act 2009* (GIPA Act) is to open government information to the public to maintain and advance a system of responsible and representative democratic government.

The GIPA Act places various obligations on agencies within NSW in respect of the publication and release of the information that they create and hold. The GIPA Act also provides rights for persons to apply for access to government information.

These rights remain applicable where government uses technology to provide services and inform decisions.

What is digital government?

Digital government, where government agencies seek to improve customer service using digital technologies extends the meaning of government information. In this context, information takes many forms including, source codes, test suites, metadata, documentation, emails, video, photography and CCTV footage. This information is also used in many different and sometimes novel ways including algorithms to support artificial intelligence and machine learning.

To support digital government new ways of providing services to citizens are being implemented including:

- Increasing use of government information in digital form and the creation of new data sets to inform decision making and service delivery
- Arrangements might involve government outsourcing or contracting with a third party to

provide traditional government services or to provide the technology that supports those services

- The use of automated decision-making and other inputs to decision-making that are supported by technology.

What is automated decision-making?

An automated decision-making system describes a computerised process that either assists or replaces the judgement of human decision-makers.¹

This technology can perform many functions that previously could only be done by humans. As these systems are adopted by governments, citizens will increasingly be subject to actions and decisions taken by, or with the assistance of, automated decision-making systems. To fully exercise their rights, it is important that individuals are able to access information on how a decision is made and what information was used to reach that decision.

Automating systems can assist decision-making in a number of ways. For example, they can:

- Make the decision
- Recommend a decision to the decision-maker
- Guide a user through relevant facts, legislation and policy, closing off irrelevant paths as they go
- Have capabilities as decision-support systems, providing useful commentary for the decision-maker at relevant points in the decision-making process
- Be used as a self-assessment tool, providing preliminary assessments for individuals or internal decision-makers.²

Do citizens have a right to access digital government information?

Yes. The right to access information under the GIPA Act includes the right to information in digital form.

¹ Commonwealth Ombudsman, [Automated Decision making: Better Practice Guide](#), 2019.

² Dominique Hogan-Doran SC. "Computer says "no": automation, algorithms and artificial intelligence in Government decision-making", *The Judicial Review* (2017) 13.

How can I access digital government information?

The GIPA Act provides four access pathways which require agencies to ensure that information is available:

- Proactively meaning agencies must publish certain information so that it is publicly available
- Promote access to information by authorising its public release
- Provide information informally following a request
- Respond to an application for access information made by any member of the public.

The four access pathways are described in the IPC Fact Sheet: [Your right to access government information](#).

In requesting digital government information citizens are encouraged to ask four key questions:

- Who holds the information: for example, is it a government agency, taskforce or a contractor who is providing government services?
- In what form is the information held: for example, is it in a data set; is it a source code; an algorithm?
- How will access be provided: for example, in a data set; in a document that describes the source code or a test suite of data?
- Will I need assistance in interpreting the information; for example, are there other documents that I will need to access to understand or interpret the information?

What obligations do agencies have?

Agencies have an obligation to provide advice and assistance to citizens seeking access to information. The Information Commissioner has stated that to be effective in providing advice and assistance agencies need to provide:

- Advice about the different ways information is held and can be accessed such as websites, data sets and inventories of machine enhanced decision-making
- An explanation about how to obtain information using the four access pathways under the GIPA Act
- Where relevant transferring the request to a different agency that holds the information.

Agencies should also ensure that government licensing and contractual arrangements provide access to information and importantly ensure 'explainability' in the provision of government services and decision-making. Relevant to digital government agencies also have obligations under the GIPA Act to:

- proactively identify the kinds of information (including data) held by the agency and describe how that information can be accessed³
- ensure that any documents that are likely to affect rights, privileges, benefits, obligations, penalties or any other entitlement or liability that affects citizens is disclosed as *open access* information⁴
- ensure that a description of the ways in which functions, including decision-making functions, are exercised is available as *open access* information.⁵

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.

³ GIPA Act, section 20(1)

⁴ GIPA Act, section 23

⁵ GIPA Act, section 20(1)(b)