



Public officials and personal information under the GIPA Act

This fact sheet has been developed to provide guidance and assist agencies in understanding the definition of personal information under the *Government Information (Public Access) Act 2009* (GIPA Act) as it applies to public officials.

The GIPA Act gives a member of the public an enforceable right to access information 'held' by a New South Wales (NSW) government agency.¹ Section 5 of the GIPA Act establishes a presumption in favour of disclosure of government information and an access applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information (section 9 of the GIPA Act).

The objects of the GIPA Act intend that 'the discretions conferred by the Act be exercised, as far as possible, so as to facilitate and encourage...access to government information'.²

This fact sheet recognises that disclosure of public officials' information furthers openness, transparency and accountability in decision-making.

What is personal information?

The GIPA Act defines **personal information** as information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.³

However, the definition of personal information excludes two identified types of information:

- (a) information about an individual who has been dead for more than 30 years,

- (b) 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 the person was engaged in the exercise of public functions.

How will I know if the information is about a public official?

The following questions will assist in assessing whether the personal information is about a public official.

Does the information include an individual's name?

- Yes No

If the answer is **YES**, then the information may be personal information but whether it is in the exercise of a public function will depend on the answer to the following questions.

Does the information include their non-personal contact details?

The non-personal contact details refer to a work telephone number, a work mobile number or work email address.

- Yes No

If the answer is **YES**, then this information is not considered to be personal information under the GIPA Act, and you will need to proceed to the next question.

Is the information about the exercise of public functions?

Where public officials' information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose their personal information unless special circumstances existed. This is because the information would reveal nothing more than the fact that the person was engaged in the exercise of public functions.

¹ See Section 4 GIPA Act

² Section 3(2) GIPA Act

³ Clause 4 Schedule 4 GIPA Act

A function of a public official is an agency function if it is a function of a kind that is or was ordinarily exercised by an agency⁴ or a function of an agency that the public official is exercising pursuant to a contract or other arrangement with the agency.⁵

A public function includes the:

- accepted requirements of the official's role e.g. signing correspondence, making decisions, providing a service;
- actions relevant to the performance of the role e.g. speaking on behalf of a public organisation, consulting with other officials and members of the public or business and media;
- functions that are usually exercised by people employed within a minister's office, state owned corporation, the university, council and public sector.

Whether the information demonstrates that the person was engaged in the exercise of public functions is a question of fact and will need to be determined with reference to the information in question. Discretion can be applied in specific circumstances where an agency considers that a public official is engaged in an action that reveals more than just the fact that a public official was exercising their public functions. For example, as in the case of *Applicants v Commissioner of Police* in which the Tribunal considered that expressing opinions as part of a complaint investigation as being more than the exercise of a public function.⁶

Does the information include the relevant agency's name?

Yes No

If you have answered **YES**, then the name of the agency is not personal information and is generally publicly available any way and should be made available.

Does the information include the relevant agency's address?

Yes No

If you have answered **YES**, then the address of your agency is not personal information and is generally publicly available any way and should be made available.

If you have answered **YES** to each of the above questions then under the GIPA Act, the information is unlikely to be personal information and therefore excluded from the definition of personal information.

What does reveal mean?

The term 'reveal' is defined in the GIPA Act to mean: *To disclose information that has not already been publicly disclosed (otherwise than by lawful means).*⁷

However, the fact that the personal information of a public official may be known to an applicant or any other individual involved for some specific purpose, is not considered to have been revealed.⁸ This is because release of information under the GIPA Act is considered to be release to the world at large. It must therefore be information that is already publicly known and available.

The personal information of public officials that is featured on an agency's website would be considered to be publicly revealed information.⁹

Therefore when considering if the information should be released in response to an access application, a decision maker should have regard to whether the information has already been revealed and is publicly available already.

Do I need to apply the public interest test?

NSW Government agencies must balance the pro-disclosure objectives of the GIPA Act against the potential risks posed to some public officials by the disclosure of their identity and contact information.

There is a general presumption in favour of disclosure of information that promotes open discussion of public affairs and informs the public about the operations of agencies.

For information about the public interest test see the IPC fact sheet for public sector agencies: [What is the public interest test?](#)

Other considerations

In summary, under the GIPA Act, information about a public official that reveals nothing more than the exercise of a public function is not considered personal information and should generally be released. However, in exceptional circumstances there may be legitimate reasons why release is not favoured.

Work, Health & Safety

One such reason is the obligations of an agency under the *Work Health and Safety Act 2011 (NSW)* (WHS Act) to ensure the safety of employees. Any such consideration should be exercised with caution and only in exceptional circumstances. The agency must be able to demonstrate clearly the public interest factors that favour non-disclosure of the information.

⁴ Section 5(2)(a) Schedule 4 GIPA Act

⁵ Ibid, Section 5(2)(b)

⁶ *Applicants v Commissioner of Police (NSW)* [2015] NSWCATAD 22 [at 62–63]

⁷ Clause 1 Schedule 4 GIPA Act

⁸ *Beregi v Department of Planning Industry and Environment* [2020] NSWCATAP 185 the Appeal Panel explained [at 99]

⁹ 'WN' and Inspector General of Taxation (Freedom of information) [2020] AICmr 71 (22 December 2020) [at 28]

Agencies should also be aware that the WHS Act is not listed in Schedule 1 of the GIPA Act and, therefore, may be overridden by section 11 of the GIPA Act. In the WHS Act, the exceptions to the prohibition on disclosure of information include section 271(3)(e). Section 271(3)(e) of the WHS Act provides an exception to the disclosure of information or the giving of access to a document “that is required or authorised under a law”, which includes a determination to provide access under the GIPA Act.

An agency may consider that release of a public official’s personal information will expose the public official to risk of harm or of serious harassment or serious intimidation.¹⁰ This attracts a high threshold to substantiate and whilst a subjective fear or risk of harm may exist, the agency must objectively demonstrate disclosure could reasonably expect to expose the public official to such a risk of harm. The Tribunal has stated that exposure to harm is not limited to the access applicant posing a risk to another person but the person to whom the information relates to may otherwise be exposed to harm.¹¹

Irrelevant information

In some cases, the names and contact details of individual public officials will fall outside the scope of a GIPA request and this will be apparent on the face of the request. Agencies are encouraged to seek confirmation from an applicant when it is not clear whether the information applied for includes public officials’ personal information.

Section 74 of the GIPA Act provides that information that would be regarded as irrelevant to a GIPA request can be deleted from documents before they are released to the GIPA applicant.

If a decision is made to redact this information because it is not relevant to the information applied for, it is best practice for an agency to include such details in its notice of decision. Additionally, it is generally helpful to an applicant to mark on the document where text has been redacted and the grounds for the deletion being section 74 of the GIPA Act.

The role of Privacy legislation

In NSW the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIIP Act) outlines how NSW public sector agencies manage personal information and the functions of the NSW Privacy Commissioner. The PPIIP Act establishes the Information Protection Principles (IPPs) that govern how NSW public sector agencies collect, store, use and disclose personal information. The Act also contains a series of exemptions in specific circumstances.

Where the information requested is personal information, the PPIIP Act may apply when dealing with an access request. Section 4 of the PPIIP Act defines personal information as ‘information or an opinion forming part of a database and whether or not recorded in a material form about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion’. Clause 4 Schedule 4 of the GIPA Act also contains a definition of personal information.

Agencies are to apply the definition under the Act in which the information was requested. Where agencies are considering requests for personal information under the PPIIP Act, the PPIIP Act definition of personal information applies. However, where agencies are considering requests for personal information under the GIPA Act, the GIPA Act definition to personal information applies.

The only situation where the definition of personal information under the PPIIP Act will be relevant to requests being dealt with under the GIPA Act is when an agency is establishing the consideration that an IPP has been breached as a factor against disclosure.¹² In such circumstances, agencies need to look at whether the information is personal information for the purposes of the PPIIP Act, since the IPPs only apply to that information.

If an agency finds that either 3(a) or 3(b), or both, are public interest considerations against disclosure and that releasing the information would contravene the PPIIP Act, it may still release the information after applying the public interest test under the GIPA Act. This is made clear by section 5 of the PPIIP Act, which provides that nothing in that Act serves to lessen the obligations agencies must exercise under the GIPA Act. Therefore, if the public interest considerations in favour of disclosure outweigh those against, then the personal information can be released to the applicant. In the context of considering an information access request and applying the ‘public interest test’ the GIPA Act must be applied and accordingly s5 of the PPIIP Act must be considered together with s20(5) of the PPIIP Act.

Other useful resources

Other resources that may be useful on this topic include:

- [What is the public interest test?](#)
- [Guideline 4 – personal information under the GIPA Act](#)

¹⁰ Clause 3(f) Section 14 GIPA Act

¹¹ *Jackson v University of New South Wales* [2019] NSWCATAD 224

¹² Clause 3(b) section 14 GIPA Act

For more information

Contact the Information and Privacy Commission NSW (IPC):

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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.