



## Timeframes and extensions for deciding access applications under the GIPA Act

This fact sheet is intended to assist applicants and agencies in understanding the requirements of section 57 of the *Government Information (Public Access) Act 2009* (GIPA Act).

The object of the GIPA Act is to open government information to the public.<sup>1</sup> The GIPA Act provides a legally enforceable right to members of the public to access government information.

The GIPA Act requires that the discretions conferred under the Act are exercised, as far as possible, to promptly facilitate and encourage access to government information at the lowest reasonable cost.<sup>2</sup>

These discretions include when an agency seeks to extend the timeframe to decide a formal access application by agreement with the applicant.

### What is the timeframe to decide an access application?

The GIPA Act outlines the statutory timeframe to decide an access application and includes provisions for the allowable extensions to the decision making period.

An agency must decide an application and give the applicant notice of that decision within 20 working days after it is received.<sup>3</sup> This is known as the 'decision period'. A working day is defined as any day that is not a Saturday, a Sunday, a public holiday or any day during the period declared by the Premier as the Christmas closedown period.<sup>4</sup>

The date an application is decided is the date on which the agency issues its decision to the applicant.<sup>5</sup> Given the 20 working day decision period, agencies should decide as soon as practicable if it is expected that an application will take longer to process because record retrieval or consultation is required.

All government agencies are required to uphold the fundamental right of access to government information and adhere to the statutory timeframes provided by the GIPA Act.

### When can an agency extend the decision period?

The circumstances in which an agency may extend the time for deciding an access application are limited.

If necessary, the 20 working day decision period can be extended by up to either:

- a further 10 working days, either to consult another party or to retrieve archived records, or
- a maximum of 15 working days where the agency has to both consult and retrieve archived records.<sup>6</sup>

Extensions for these reasons do not require the consent of the applicant.

### Searching for information in digital archives

Agency record-keeping systems should not adversely impact applicants and electronic record keeping should promote ease of access to those records.

Agencies need to be familiar with their record-keeping systems to ensure they are able to meet their obligations under the GIPA Act.

The manner in which an agency routinely saves records in its usual electronic record-keeping system does not enliven an agency's discretion to extend the decision period by 10 days. The discretion to unilaterally extend time can only be enlivened in circumstances where the act of retrieval involves some additional difficulty for the agency such as from a place where public or historical records are kept.<sup>7</sup>

<sup>1</sup> Section 3 GIPA Act

<sup>2</sup> Section 3(2)(b) GIPA Act

<sup>3</sup> Section 57 GIPA Act

<sup>4</sup> Clause 1 of Schedule 4 to the GIPA Act

<sup>5</sup> More information about the calculation of time is

available on the [IPC's website](http://www.ipc.nsw.gov.au)

<sup>6</sup> Section 57(2) GIPA Act

<sup>7</sup> *Walton v Eurobodalla Shire Council* [2022] NSWCATAD 46

## Can an agency ask an applicant for an extension?

In some circumstances, agencies may need to ask the applicant to agree to an extension of the decision period. The GIPA Act provides for an extension (and further extension) of the decision period by agreement with the applicant.<sup>8</sup>

These extensions should be exercised to help meet the objects of the GIPA Act. Agencies should have sufficient internal resources in place to ensure extensions of timeframes are not often relied on to process access applications received.

Before asking the applicant to agree to an extension of the decision period, an agency should consider the outstanding tasks and a realistic time frame in which these tasks will be completed.

This approach will allow the agency to provide the applicant with an informed explanation as to what has caused a delay in the decision period. It may also assist with an applicant's understanding of an agency's commitment to further processing the application without any excessive delay.

## Does an applicant have to agree to an extension?

No. Providing an applicant with the reasons for the extension and the timeframe that is needed, will assist an applicant in responding to an extension of time request. However, an applicant may choose not to agree to an agency's request for an extension of the decision period.

If an agency does then not make a decision within the decision period, the application will be considered a 'deemed refusal' and the application fee paid by the applicant is to be refunded.<sup>9</sup> A deemed refusal does not prevent an agency continuing to deal with the application by providing an applicant with the reasons for the extension and subsequently making a late decision.<sup>10</sup>

## Is a notice to the applicant required?

Yes. The agency must as soon as practicable (and within five (5) working days) provide the applicant with notice of any extension of the decision period, including the date on which the decision is due.<sup>11</sup>

## What if an applicant amends the application?

The amendment of an access application by the applicant does not affect the period within which the application is required to be decided.<sup>12</sup>

## What if the agency requests an applicant amend an application?

If an agency asks an applicant to amend an application because it would require an unreasonable and substantial diversion of an agency's resources to process, the decision period stops running while the applicant is given the opportunity to amend the application.<sup>13</sup>

## What if consultation is undertaken by the agency?

An agency must take such steps (if any) as are reasonably practicable to consult<sup>14</sup> with a person before providing access to information relating to the person in response to an application, if it appears that:

- the information is of a kind that requires consultation under this section<sup>15</sup>, and
- the person may reasonably be expected to have concerns about the disclosure of the information, and
- those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.<sup>16</sup>

An agency may decide to release information, despite receiving an objection to do so. In these circumstances, the agency must notify the person of its decision and the available review rights.<sup>17</sup> The agency must not release the information until any review rights have expired.<sup>18</sup>

The decision period can only be extended to allow for this mandatory consultation, and not other consultation that the agency may choose to undertake.

The Information Commissioner has produced guidance on consultation. It aims to promote a greater consistency in consultation practices under the GIPA Act.

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<sup>8</sup> Section 57(4) GIPA Act

<sup>9</sup> Section 63(1) GIPA Act

<sup>10</sup> Section 63(2) GIPA Act

<sup>11</sup> Section 57(5) GIPA Act

<sup>12</sup> Section 49(5) GIPA Act

<sup>13</sup> Section 60(4) GIPA Act

<sup>14</sup> Fact sheets on consultation for [agencies](#) and [third parties](#) are available on the IPC website

<sup>15</sup> Section 54(1) GIPA Act

<sup>16</sup> Section 54(1) GIPA Act

<sup>17</sup> Section 54(6) GIPA Act

<sup>18</sup> Section 54(6) GIPA Act Ibid

## Are there special conditions for schools?

There are special conditions that enable an extension of the decision period for access applications involving schools.<sup>19</sup> If any part of the decision period occurs when the school is closed for school holidays, the decision period is extended by the number of working days occurring in that school holiday period after the application is received.<sup>20</sup>

## What about cluster agencies?

The GIPA Act places information access obligations on agencies. It is therefore essential to determine which agency made the decision. Cluster arrangements highlight the importance of ensuring that there is a coordinated and prompt response to search requests, and to support timely decision-making by the agency.

Information in larger cluster agencies is often not centrally held and search requests may need to be sent to different business units. It is the responsibility of the principal officers to ensure staff from other units who may not regularly deal with formal information access requests, are aware of both their individual responsibilities and the timeframes provided by the GIPA Act.

A practical working knowledge of the agency's information systems and how its records are managed will help determine where information is likely to be held. Prompt and clear internal communication allows for an optimal information retrieval strategy.<sup>21</sup>

The promotion and fostering of a culture of shared responsibility and timeliness is required to both adhere to statutory timeframes, and to promote the presumption in favour of disclosure provided by the GIPA Act.<sup>22</sup>

Additional guidance relevant to timeframes for managing GIPA applications is contained in the fact sheets and guides listed below.<sup>23</sup>

## Is a decision to extend the timeframe a reviewable decision?

A decision by an agency to extend the timeframe to decide an application is not reviewable.<sup>24</sup> However, an applicant may seek a review of the final decision.<sup>25</sup>

## Where can agencies get further assistance?

The IPC's [GIPA Tool](#) for case management provides agencies with functionality enabling report generation that can be applied to track and monitor applications and timeframes.

Use of the IPC GIPA Tool will assist the agency in better managing GIPA applications, and will assist with timeframes generally.

### For more information

Contact the Information and Privacy Commission NSW (IPC):

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

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<sup>19</sup> Section 6 *Government Information (Public Access) Regulation 2009* (GIPA Regulation)

<sup>20</sup> Section 6 GIPA Regulation Ibid

<sup>21</sup> For more information about cluster arrangements and exercising responsibilities under the GIPA Act see [IPC Fact Sheet: The GIPA Act: Agency systems, policies and practices - guidance for principal officers](#)

<sup>22</sup> Section 5 GIPA Act

<sup>23</sup> Fact sheets on timeframes, guidance for agencies: [Principal Officers](#); [Substantial and unreasonable diversion of agency resources](#); [Reasonable searches](#); [Guide to section 121](#)

<sup>24</sup> Section 57(2) GIPA Act; see, *Walton v Eurobodalla Shire Council* [2022] NSWCATAD 46 where the Tribunal noted that a decision under s. 57(2)(b) to extend time was not reviewable, however, was relevant in reviewing a decision to impose a processing charge under s. 64(1)

<sup>25</sup> Sections 82, 58(2), 89 or 100 of the GIPA Act.