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commission
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State Archives and Records Authority of New South Wales – GIPA Act Compliance Report

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1. Purpose

This desktop review examined the systems and processes of the State Archives and Records Authority of New South Wales (SARA) in relation to its compliance with the requirements of the *Government Information (Public Access) Act 2009* (GIPA Act).

The Information and Privacy Commission (IPC) recognises SARA has been impacted by the machinery of government (MoG) changes, resulting in it being established as an executive agency under the Department of Enterprise, Industry and Trade's (DEIT's) portfolio¹. The aim of the review was to proactively engage with SARA to support and provide guidance as it develops and implements policies and practices to ensure compliance with the GIPA Act whilst the structure and functions of the executive agency are being finalised.

The review was undertaken in accordance with section 17(g) of the GIPA Act, to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act. Its purpose was to review and assess SARA's self-assessment of its compliance with the GIPA Act. This review was limited to a desktop assessment and review of the SARA's self-assessment of its compliance alongside a desktop review of its website.

As a regulatory tool a desktop audit is applied in areas of small to moderate risk of non-compliance and may also form the basis of a preliminary assessment. The methodology of a desktop audit should be recognised as constrained by factors including:

- independent remote assessment;
- non inquisitorial;
- focused on identified compliance risks and informed by agency responses.

On that basis it is distinguishable from an onsite audit which can adopt a more direct inquisitorial approach. Accordingly, in general the IPC conducts desktop audits to elevate compliance by way of guidance, awareness raising and in some cases recommendations to an agency. However, poor results or lack of cooperation by an agency may result in further and escalated compliance action.

Accordingly, the focus of this review did not include the content or application of the policies and procedures that SARA has developed or is developing to fulfil its requirements.

2. Threshold issues

In conducting any desktop audit or monitoring exercise the IPC must examine the agency's website as a means of assessing compliance with the GIPA Act. In contemporary democratic societies agency websites provide the most effective means of communicating with and providing services to members of the public. IPC research demonstrates that google searches and agency websites are strongly represented as the first point of reference for the citizen seeking information about an agency and its functions.²

In a digital government environment, government has a positive duty to ensure E-governance. In turn, Government agencies have a duty to adopt and promote E-governance.

¹ <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-790>

² <https://www.ipc.nsw.gov.au/sites/default/files/2020-09/NSW%20Community%20Attitudes%20to%20Information%20Access%20-%202020.pdf>

E-governance is defined as:

.....that stage of e-government that inculcates digital democracy, online citizen participation, and online public discussion along with the aspects of online public service delivery.³

The GIPA Act legislates to preserve and promote *digital democracy, online citizen participation, and online public discussion⁴ along with the aspects of online public service delivery* as it envisages access to information contained on the agency's website.⁵ Agency websites must *inter alia* disclose the information held by the agency and information that the agency makes publicly available. This nexus between what is held and what is publicly available serves both a pro-integrity purpose and an efficiency purpose for both the agency and the citizen.

For the purpose of this review SARA's website was accessed through a google search for the State Archives and Records Authority. The search located a dedicated website for SARA which in summary included:

- Provides a page titled "About us"
- The "About us" page includes a contents list with a category titled "Accessing NSW State Archives Information" which includes links to explanations of public access to government information and 3 pathways to obtain information being: a search of the website; an informal request option and a formal request for information option.

Under the GIPA Act agencies must provide assistance to applicants seeking to exercise their right to access government information.⁶ The SARA website facilitates that objective and SARA may wish to consider enhancing this assistance further by including an "Access to Information" link at the bottom of its landing page in a similar manner to the privacy link.

3. Overview

The term 'machinery of government' refers to the manner in which the responsibilities of government departments and agencies are organised. A MoG change can be made for a number of reasons but in essence will arise as a result of the NSW Premier reorganising the functions and responsibilities of government departments and agencies. In this case, the effect of the MoG was to establish SARA as an executive agency.

In order to give legislative effect to the MoG change, an Administrative Arrangements Order is required to be prepared by the Department of Premier and Cabinet (DPC). The responsibility for implementing the machinery of government changes falls to the head of the agency subject to the MoG.

The impact of these MoG changes can crystallise in various challenges for organisations, such as implementing new processes and procedures to ensure compliance with all legislation that impacts the agency. The IPC acknowledges that giving effect to MoG changes can take time to fully implement and embed.

³ <https://www.igi-global.com/dictionary/cyber-capability-framework/8702>

⁴ GIPA Act section 20

⁵ GIPA Act section 6(2)

⁶ GIPA Act section 16

This desktop audit recognises that MoG changes are a natural part of the manner in which government operates and these changes will always occur as the political landscape changes. Under the GIPA Act, the IPC has a role to play in providing information, advice and assistance on matters relevant to the GIPA Act, and in connection with the exercise of functions under the GIPA Act⁷. Accordingly, the IPC has proactively engaged to support SARA whilst it navigates its way through these challenges by providing guidance on what robust compliance with the GIPA Act looks like.

4. Background

SARA is a statutory body established under the *State Records Act 1998* responsible for managing state records as well as the development, preservation and access to those records. Prior to these MoG changes SARA operated as an agency within DPC. The DPC oversaw various compliance obligations of SARA with the GIPA Act. The MoG changes of 21 December 2021⁸ became effective from 1 April 2022, resulting in SARA having to review their organisational structure and establish new processes and procedures to support its compliance with the GIPA Act as an executive agency.

The results of this desktop audit together with the agency self-assessment have demonstrated that some systems, policies and practices of the agency remain under development. This is not inconsistent with the development of practices and procedures generally in a newly established executive agency. Although a newly established executive agency, SARA has demonstrated that its compliance maturity is more advanced in a number of areas.

Despite the challenges SARA has faced with the MoG changes, I am satisfied that the agency has demonstrated a willingness to comply, and that its leadership has demonstrated a commitment to compliance, by acknowledging through its self-assessment audit those areas where policies or procedures are absent or in development. The IPC encourages SARA to continue finalising processes and procedures in progress to ensure effective compliance with the GIPA Act.

In light of these findings there is no factor that would motivate an escalation of regulatory action by the IPC.

This report outlines the findings and proposed recommendations as a result of the IPC's review.

5. Methodology

5.1 Sample selection

In undertaking this review the IPC requested that SARA undertake a self-assessment of its compliance with the GIPA Act using the IPC's Self-Assessment Tool. The IPC reviewed SARA's compliance with the GIPA Act as described in its self-assessment against a sample of information that was publicly available on its website on the date of the assessment.

For the purpose of the methodology adopted during this review, it is to be noted that for some criteria the IPC was not able to measure each category within the self-assessment tool against publicly available information as the criteria did not lend themselves to such a measure. This is because such criterion related to policies or a procedure to support a function and such policy or procedure was not publicly available and nor was it required to be. Where this is the case, the IPC has observed that the criterion was "Not measurable" and informed its assessment based on the responses provided by SARA.

⁷ GIPA Act Section 17

⁸ <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-790>

5.2 Assessment criteria

The IPC assessed SARA's compliance with the GIPA Act against the criteria identified in the self-assessment tool. The criteria are set out in the table below.

Assessment criteria
1. Culture and Leadership
2. Governance
3. Legislative Compliance and Achievement Open access Contract register Authorised proactive release Informal release Formal access applications Disclosure logs
4. Supporting tools and systems
5. GIPA functions

5.3 Conduct of the analysis

The analysis of SARA's compliance was conducted by the IPC during July 2022. SARA provided the IPC a copy of its completed self-assessment. IPC staff examined SARA's responses in the self-assessment tool in conjunction with the publicly available information on SARA's website.

The assessment of SARA was performed with reference to the self-assessment tool, with data and observations recorded. The IPC recorded and retained data in undertaking the audit. For the purposes of this report, it was deemed not necessary to provide a breakdown of the findings and recommendations are applicable generally and not specifically.

6. Acknowledgments

The IPC appreciates the assistance and co-operation provided by SARA and its officers during the review and assessment. The IPC remains available to assist the SARA as it continues its work in fulfilling its responsibilities under the GIPA Act and maturing its compliance.

The Information Commissioner also discloses her role as Deputy Chairperson of the SARA Authority Board and confirms that no conflict of interest has arisen as a result of this audit conducted at arm's length by delegated officers of the IPC. Additionally, the Authority Board does not have responsibility for operational matters such as those dealt with in this report.

7. Observations

7.1 GIPA Culture and Leadership

Criterion		Result
I.	Agencies with an open access/data culture	
a	Support and advocate an open access/data culture as a priority from the Board and the executive to all levels of the organisation	Not measurable
b	Have established governance around access to open information and data	Not measurable
c	Reflect and monitor and regularly update what is open access and open data and how it may be made available to citizens	Not measurable
d	Provide training and support to ensure staff are aware of open access and open data policies and requirements	Not measurable
e	Promote the four pathways for access to information	Not measurable
f	Promote a pro-disclosure culture	Not measurable
g	Support informed and independent decision-making by Right to Information officers	Not measurable

Comments, findings and recommendations

Comment: Under the GIPA Act, leaders have an important role in promoting awareness and fostering an organisational culture that advances and promotes the objects of the GIPA Act. This can be achieved by adoption of an open access and open data culture by promoting releasing information supported by a governance framework that demonstrates a commitment to open access and data.

Observation

In undertaking its assessment of SARA against this criteria, the IPC's review was limited to an assessment of the agency's response against the information publicly available on its website. Therefore, the IPC's assessment was limited to SARA's own self-assessment measure of compliance.

SARA identified its compliance to be at 93%, indicating most categories had processes/procedures in place, except for one category in which they self-identified that processes and procedures were under development. In this regard, SARA's self-assessment notes that internal procedures are currently being developed to support this category. The IPC acknowledges the challenges SARA faces as a newly established executive agency in being able to review, monitor and regularly update on what is open access information.

Comments, findings and recommendations

The self-assessment results indicate that SARA has established a positive approach towards GIPA compliance, recognising the importance of leadership and culture early as well as implementing action which demonstrates that SARA supports open access and open data. The self-assessment highlights:

- Regular Governance, Executive, ARC and Board meetings are used to consider and support advocacy for open access and open data.
- GIPA policies have been updated and communicated to staff following status as an Executive Agency.
- Implemented new induction process for staff as well as developed new online training for all staff.
- Governance team has undertaken GIPA training through the Crown Solicitor's Office. However, further training will be provided to additional staff to ensure staff to access application ratio is sufficient.
- The four pathways to access information are promoted on the website.
- Code of Conduct and a complementary policy suite encourage disclosure.

Overall, it is encouraging to see the actions SARA has taken to promote the objects of the GIPA Act.

In order to continue supporting staff training, SARA may also wish to refer to the available suite of e-learning modules that the IPC has developed, which includes:

1. Access Training for Decision Makers under the GIPA Act
2. Towards Open Government Information in NSW
3. Open Data
4. The Contract Register and Contract Disclosures

In particular, the IPC's module on 'Towards Open Government Information in NSW and Open Data' may assist the SARA to elevate the understanding, culture and awareness of open access/open data across the organisation.

SARA may also wish to consider undertaking a further review against this assessment within twelve months to determine progress in reflection, monitoring and updating open access and open data information. The implementation and development of these processes and policies may be supported by a remediation plan that identifies the timeframes in which full implementation will occur by.

Recommendation 1: It is recommended that SARA undertake a further self-assessment of its compliance under the GIPA Act, within 12 months of being established and review its progress.

Recommendation 2: It is recommended that SARA develop a remediation plan for the implementation and finalisation of all policies and procedures it has identified as being in development with timeframes for full implementation.

7.2 Governance

Criterion		Result
I.	Have in place procedures to comply with Schedule 2	Compliant

Comments, findings and recommendations
<p>Comment: Schedule 2 of the GIPA Regulation provides for statistical information about the formal access application that an agency has received to be captured and included in the annual report. This statistical information informs the preparation of the Information Commissioner's annual report on the operation of the GIPA Act in accordance with section 37 of the <i>Government Information (Information Commissioner) Act 2009</i> (GIIC Act).</p> <p>Section 37 of the GIIC Act requires that the Information Commissioner, as soon as practicable after 30 June in each year, prepare and publish a report on the operation of the GIPA Act (generally, across all agencies) for the preceding 12 months. The Information Commissioner is further required to furnish that report to the Presiding Officer at each House of Parliament and a copy of the report to be provided to the Minister responsible for the IPC.</p> <p>Observation</p> <p>SARA's self-assessment specifies a result of 100% compliant. The IPC's review located current and past annual reports on SARA's website. A review of the 2020/21 Annual Report observed the information contained in the annual report was sufficient to meet all of the required statistical information set out in Schedule 2 of the GIPA Regulation⁹. On this basis, the IPC is satisfied that SARA has the necessary procedures in place at present that supports the agency to meet its requirements under Schedule 2 of the GIPA Regulation.</p>

7.3 Legislative compliance and achievement

Criterion		Result
I.	Open access information	
a	Makes its open access information publicly available, unless there is an overriding public interest against disclosure	Compliant
b	Makes Open Access Information available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency)	Compliant
c	Ensures there is at least one way that people can access this information free of charge	Compliant

⁹

https://media.opengov.nsw.gov.au/pairtree_root/14/2a/b9/42/e8/e6/4f/51/bb/cd/fe/bc/9e/e9/22/56/obj/2020_21_Annual_Report_of_the_State_Archives_and_Records_Authority_of_NSW.pdf

Criterion		Result
d	Keeps a record of the open access information that an agency does not make publicly available on the basis of an overriding public interest against disclosure	Not compliant
e	Has an Agency Information Guide that meets the requirements specified in section 20 of the GIPA Act and the IPC's AIG guideline	Not compliant
f	Reviews and updates the AIG every 12 months	Not compliant
g	Notifies the Information Commissioner before amendment to, or release of, an AIG (section 22)	Not compliant

Comments, findings and recommendations
<p>Comment: The GIPA Act requires a range of open access information to be made publicly available unless there is an overriding public interest against disclosure of the information. Open access information is to be publicly available free of charge on an agency's website (unless to do so would impose unreasonable additional costs on the agency or there exists an overriding public interest consideration against disclosure of the information (OPIAD)¹⁰).</p> <p>The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information and helps to foster responsible and representative government that is open, accountable, fair and effective.</p> <p>The type of information that is open access is defined in section 18 of the GIPA Act and includes: the agency's information guide (AIG); policy documents; disclosure log of access applications; register of government contracts; and record of open access information not made publicly available. The open access requirements vary according to the type of agency (see Parts 2, 3 and Schedule 1 GIPA Regulation).</p> <p>Observation</p> <p>This review observed that SARA has a website in which it makes some open access information available free of charge. That open access information included annual reports and policy documents.</p> <p>The types of policies that were made publicly available on their website included:</p> <ul style="list-style-type: none"> • Work Health and Safety Policy • Engaging and Managing Volunteers Policy • Bullying and Harassment Free Workplace Policy • Online Publication Policy <p>The SARA website also notes that the disclosure log and register of government contracts are considered to be open access information. SARA's compliance with these requirements is addressed in later sections of this report.</p>

¹⁰ GIPA Act Section 6

Comments, findings and recommendations

SARA self-reported a level of compliance of 71%, assessing themselves as in progress for items d) to g). SARA's self-assessment outlines they are currently still in the process of establishing internal GIPA processes and updating their website now that they are an executive agency. The IPC acknowledges the MoG changes became effective from 1 April 2022, and the timing of those changes were concurrent with this review. The IPC appreciates that as a newly established executive agency several internal policies and procedures are required to be established and updated. Despite these challenges SARA has taken positive steps to meet its open access obligations under section 18 of the GIPA Act by actively publishing the open access information currently available to them.

At the time of this review, it does not appear that the agency had notified the Information Commissioner in accordance with section 22 of the GIPA Act of any review of its AIG. This would be consistent with the SARA's own assessment of its compliance to the requirements of section 22 of the GIPA Act. SARA should take steps to implement an AIG and in doing so, have regard to the IPC's guidance for AIG's. Additionally, it should ensure that it provides timely notification to the Information Commissioner, consistent with the requirements of section 22 of the GIPA Act.

SARA also assessed itself as 'in progress' in respect of the record of open access that the agency does not make publicly available on the basis of an OPIAD. The IPC acknowledges that SARA is in the process of developing its record under section 6(5). A record of the information that the agency does not make publicly available is an important mechanism to assist members of the public in understanding the full scope of the agency's information holdings and the information which has not been made available publicly on account of an OPIAD. In finalising their open access information on its website, the agency is encouraged to include a record of open access information that is not made publicly available.

Recommendation 3: It is recommended that SARA finalises and adopt its AIG within 4 months of the date of this report. Additionally, it should ensure that it takes steps to meet the requirements of section 22 of the GIPA Act for notification to the Information Commissioner.

Recommendation 4: It is recommended that SARA takes steps to amend its website to include a statement of the information that it does not make publicly available under section 6(5) of the GIPA Act.

Criterion		Result
II.	Contract register	
a	Maintain a register of all class 1 contracts with a value of \$150,000 (including GST) or more that identifies the name and business address of the contractor, the commencement date and duration of the contract, details of the project, project cost, basis for variations and selection process	Not measurable
b	Update the register within 45 working days of the contract coming into effect	Not measurable
c	Ensure that the contract register includes all additional information required for class 2 contracts (see section 30)	Not measurable

Criterion		Result
d	Ensure that the register fully meets the requirements for Class 3 contracts (those with a value of \$5 million or more) (see section 31)	Not measurable
e	Ensure that if a copy of a contract is not included on the agency register or only some of the provisions are included because it contains confidential information (see section 32), agencies place on the register: <ul style="list-style-type: none"> the reasons why the contract or provisions have not been included on the register a statement as to whether it is intended to include the contract or provisions at a later date, and when this is likely to occur a general description of the types of provisions that have not been included. 	Not measurable
f	Ensure that processes are in place to update the register in the case of material variations to the contract. Material variations should be included in the register within 45 working days after the variation becomes effective.	Not measurable

Comments, findings and recommendations
<p>Comment: The GIPA Act requires that all public sector agencies that enter into a contract with the private sector, to have established a register of all government contracts that have a value, or are likely to have a value, of \$150,000 inclusive of GST or more. These requirements upon agencies are set out in sections 27 – 40 of the GIPA Act and includes exemptions where that may be relevant.</p> <p>Observation</p> <p>The IPC’s desktop review observed that SARA’s “What is public access to government information?” webpage outlines its contract register is available via the NSW eTendering website. The NSW eTendering website was searched to locate contracts that SARA may have entered into, however no results were obtained. In their self-assessment, SARA has noted that there is a contract register, procurement policy and contract management policy in place. It is unclear whether the contract register referred to in the self-assessment is referencing the NSW eTendering website.</p> <p>As part of the desktop review, SARA’s search function was also utilised to determine whether there were any other webpages that referenced their register of government contracts and how to access it. The searches conducted on SARA’s webpage did not locate any additional information relevant to a register of government contracts.</p> <p>The IPC notes that as a new executive agency, SARA is still in the process of updating and finalising webpages. Nonetheless, the IPC reminds the agency that a register of government contracts is considered to be open access information and should be made readily available for free on their website. Currently it is unclear whether the contract register SARA states is in place is referring to the NSW eTendering website or if they have developed a separate contract register as an executive agency.</p>

Comments, findings and recommendations
<p>SARA assessed itself as compliant with most of the categories except for section 32 of the GIPA Act, which they state is in progress. Section 32 of the GIPA Act is concerned with the requirements for non-inclusion of confidential information in the contract register. The IPC's review of the contracts register is limited to publicly available information. This desktop review was not able to locate SARA's register of government contracts, thus not identifying any government contracts that SARA may have entered into.</p> <p>The IPC acknowledges that SARA may not have entered into a government contract in its own right for which it is captured within the definition of a government contract and/or meets the requirements of either a class 1,2 or 3. As part of the desktop review, I considered the information contained in SARA's 2020/21 Annual Report. In this regard, I note the annual report contains reference to contractors. These references however appear to be confined to the use of contractors in the context employment rather than a government contract between SARA and a private sector entity. Whilst this desktop review is limited and will not assess whether contracts are being made available on the register as required under the GIPA Act, the IPC encourages SARA to consider their contract disclosure obligations as they further develop and mature contract management and procurement practices for items b) to f). SARA may also benefit from accessing the IPC's contract register self-assessment checklist in the progress of this work.</p> <p>Recommendation 5: It is recommended that SARA consider providing further clarity regarding how to access their register of government contracts on their website.</p> <p>Recommendation 6: In undertaking its continued work to fulfil the requirements for contract register reporting, it is recommended that SARA have regard to the IPC's contract register assessment checklist. Additionally, SARA may wish to consider including completion of the IPC training on contracts register available as an e-learning module.</p>

Criterion	Result
III. Authorised proactive release	
a Make government information held by the agency publicly available unless there is an overriding public interest against disclosure	Compliant
b Make the information available either free of charge or at the lowest reasonable cost	Not measurable
c Review its program for release of government information at intervals of no more than 12 months to identify the information that it holds that should be made publicly available	Not measurable
d Have in place clear governance arrangements to manage proactive release of information	Not measurable
e Incorporate proactive release into records management processes, including processes at creation of the document or information to determine if it should be proactively released	Not measurable
f Have processes in place to determine release priorities, such as stakeholder consultation and analysis of requests	Not measurable

Comments, findings and recommendations

Comment: A key intention of the GIPA Act is to encourage proactive public release of government information by NSW public sector agencies. This is one of the primary ways to meet the GIPA Act's broader goal of advancing democratic government that is open, accountable, fair and effective. The GIPA Act authorises agencies to have proactive release programs in place and requires these to be reviewed each year, with outcomes reported to the IPC. The GIPA Act authorises agencies to release information through proactive release programs which must be reviewed each year, and outcomes reported to the IPC.

Observation

This desktop review identified that SARA aims to make information available through proactive release and advises if unsure where information is held, to contact the Governance team.

It is noted that SARA assessed itself as 100% compliant with all categories. On review of the SARA website, information is being made available proactively, including various public guides on providing public access to State records, its Online Publication Policy along with other information about particular projects being undertaken by SARA. SARA has also assessed itself as compliant with b), however they may wish to include further information on their webpage advising that the information released proactively will be made available for free or at the lowest reasonable cost. With regards to c) – f) of the requirements for proactive release, it is not possible to ascertain from a review of its website whether SARA meets the requirements.

Recommendation 7: It is recommended that SARA continue to mature and develop processes and procedures to ensure information continues to be proactively released.

Criterion		Result
IV.	Informal Release	
a	Have a process in place to manage informal requests for government information	Compliant
b	Ensure staff understand, through a documented guideline or manual, what information can be released on the basis of an informal request, and what types of information require a formal application under Part 4 of the GIPA Act	Not measurable
c	Have defined approval processes and delegations or authorisations for permitting the release of information informally	Not measurable
d	Maintain a record of informal requests to inform the future program for proactive release (section 7)	Not measurable

Comments, findings and recommendations
<p>Comment: The GIPA Act allows agencies to release information to citizens in response to an informal request. Section 8 of the GIPA Act enables agencies to release information informally. The informal release of information provides benefits for agencies and citizens and increases access to information consistent with the object of the GIPA Act. Informal release of information can be more efficient, flexible and timely for agencies and citizens. The effectiveness of this pathway can be enhanced through sound agency practices, recognising the safeguards for staff who release information and by linking the pathway to agency access mechanisms, in particular, Agency Information Guides.</p> <p>Observation</p> <p>There is limited information available on SARA's website which would confirm the level of compliance by the agency. However, it would appear that it is likely that SARA does have a mechanism to manage its informal requests by reference to how it is described on its <i>Accessing NSW State Archives Information</i> webpage. In particular, the SARA website outlines the type of information that it will typically release informally and how that information can be requested. This information describing informal access is consistent with the requirements of section 8 of the GIPA Act.</p> <p>In its self-assessment SARA identified itself as complaint with all categories except procedures to ensure staff understand the approach and requirements relevant to informal release, which they stated is in development. The IPC recognises this work is underway. Nonetheless, SARA should aim to finalise the work underway as soon as possible which will better position the agency in receiving and processing informal access applications.</p> <p>Recommendation 8: It is recommended that SARA finalises the remaining work it has identified in its self-assessment to ensure compliance with section 8 of the GIPA Act within 4 months of the date of this report.</p>

Criterion	Result
V. Formal access applications	
a Have staff who are authorised to manage formal access applications including the authority to make a reviewable decision (Right to Information officers)	Compliant
b Have processes in place to determine if the request is valid, or if the information is available via any alternative means	Not measurable
c Provide assistance and advice to the applicant to facilitate the making of a valid application (see section 16)	Not measurable
d Provide an access application form available to download on your website, or accessible in some other way and have processes for payment of the application fee and any processing charges, which can include electronic facilities.	Compliant
e Have systems and processes in place to undertake searches for information, such as identification of parameters of GIPA applications and established records storage and retrieval systems.	Not measurable

Criterion		Result
f	Have systems and processes in place to undertake consultations with third parties (see sections 54 and 54A)	Not measurable
g	Monitor the timely finalisation of requests (as the GIPA Act specifies timeframes for decisions)	Not measurable
h	Have processes in place to manage an internal review if the individual is not satisfied with the decision about release of the information	Not measurable
i	Provide decision templates and ensure processes are in place to inform decisions about waiver or reduction of fees or charges on the basis of hardship	Not measurable
j	Provide decision templates and ensure processes are in place to inform the making of the allowable decisions (section 58)	Not measurable

Comments, findings and recommendations
<p>Comment: The GIPA Act provides a legally enforceable right to access most government information unless there is an OPIAD. The GIPA Act also outlines the processes that applicants and agencies must follow in dealing with access applications and the options for the review of those decisions.</p> <p>Observation</p> <p>In its self-assessment SARA assessed its level of compliance at 80%, with a majority of criteria being either compliant and/or has procedures in place. However, the self-assessment also identified a number of criteria that was in progress or under development, which includes the development of processes for items f) and h) as well as development of templates for items i) and j).</p> <p>As there was no publicly available information about the policies and procedures that the SARA has in place to support its formal access functions, it was not possible to confirm the level of compliance by the SARA with all the elements that would be necessary to ensure that the requirements of section 9 are being met. However, this review did establish from SARA's <i>Accessing NSW State Archives Information</i> webpage that GIPA applications are managed internally by the Governance Team, thus indicating they have authorised Right to Information Officers to manage applications. Furthermore, SARA's website does provide a link to download the formal GIPA access application and outlines the two methods of submission.</p> <p>The IPC encourages SARA to avail itself of the resources and templates on its website which have been developed to support agencies in the exercise of their functions in dealing with formal access applications.</p> <p>Recommendation 9: It is recommended that SARA finalise the remaining work identified in the self-assessment to ensure compliance with the GIPA Act.</p>

Criterion		Result
VI.	Disclosure logs	
a	Keep an up-to-date agency disclosure log which contains the following information: the date the application was decided a description of the information released a statement as to whether the information is now available to other members of the public and how it can be accessed	Not measurable
b	Make the disclosure log available free of charge on their agency website	Not measurable

Comments, findings and recommendations
<p>Comment: Section 25 of the GIPA Act requires that agencies keep a disclosure log as part of their mandatory open access information. The disclosure log publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public. Each NSW government agency must publish a disclosure log on its website. Section 26 of the GIPA Act requires agencies to record the following information about each access application in the disclosure log: a) the date the application was decided; b) a description of the information to which access was provided in response to the application; and c) a statement as to whether the agency intends to make the information available to other members of the public and, if so, how it can be accessed.</p> <p>Observation</p> <p>In their self-assessment SARA advises from 1 April 2022 they maintained a disclosure log and assessed themselves as 100% compliant. On review of the SARA's website, they explain that the disclosure log was administered by the Department of Premier and Cabinet prior to 1 April 2022 and provide a link to this disclosure log. However, SARA's disclosure log at the time of the audit could not be measured as there was no information available, instead the webpage advised that it will be made available in due course.</p> <p>It is unclear whether SARA has entries in the disclosure log which it has not published or whether no information was assessed to be of public interest. I note that for the 2020/21 Annual Report, SARA decided one access application¹¹. The IPC notes SARA has only been operational as an executive agency from 1 April 2022 and as such may not have entries in the disclosure log.</p> <p>Recommendation 10: It is recommended that SARA review and update the disclosure log on their website to ensure compliance with section 25 and 26 of the GIPA Act.</p>

¹¹ SARA Annual Report 2020/21 at <https://www.opengov.nsw.gov.au/searches?query=&agencyId=26991&page=1&size=10&fullAgencyId=26991&maxPages=9> pp45-49

7.4 Supporting tools and systems

Criterion		Result
a	Provide training on a regular basis for officers authorised to exercise for GIPA functions	Not measured
b	Provide regular communication providing updates on policies or guidance on GIPA responsibilities	Not measured
c	Have in place a case management tool for managing GIPA applications	Not measured
d	Provide documented procedures for meeting GIPA requirements which are updated as required and communicated to staff	Not measured
e	Have in place procedures to assist in managing the risks associated with searches for information including: <ul style="list-style-type: none"> • guidance on conducting searches, and • templates for issuing search requests and for return of documentation and certification 	Not measured

Comments, findings and recommendations

Comment: The GIPA Act does not stipulate the particular training or tools that agencies should have in place to fulfil the legislative requirements of the GIPA Act. However, it is apparent that for those legislative requirements to be met, staff need to be supported to comply with the GIPA Act through the availability of appropriate training, documented processes and delegations, and processes to ensure requests are handled in a timely and appropriate way.

Observations:

The IPC did not measure SARA's compliance with elements required to underpin the tools and systems in place to support GIPA Act compliance. This was because the IPC accepted the outcomes from SARA's self-assessment which outlined there were processes in place for most items and identified that work was also required to achieve effective compliance for others.

It was encouraging to see that SARA supports its staff by providing GIPA training every 6-12 months. In this regard, the IPC has also developed a suite of free eLearning modules, including for decision makers, that SARA may wish to consider encouraging staff to complete.

Comments, findings and recommendations
<p>The SARA self-assessment identified that there was an absence of a case management tool for managing applications and that procedures were in development for meeting GIPA requirements. Consistent with the Information Commissioner's role in providing assistance in connection with the exercise of their functions under the GIPA Act, including by providing services to assist with the lodgement, handling and processing of access applications¹², the IPC has made available the GIPA Tool for this purpose without the need for an investment in a dedicated system. The GIPA Tool may assist SARA to efficiently manage GIPA applications and meet the requirements of reporting on annual GIPA activities under section 125 of the GIPA Act.</p> <p>Recommendation 11: It is recommended that SARA considers accessing, and making available to staff, the IPC's eLearning modules as a mechanism to support staff in exercising GIPA functions.</p> <p>Recommendation 12: It is recommended that SARA reviews the availability of the IPC's GIPA Tool as a means of managing its access applications.</p>

7.5 GIPA Functions

Criterion	Result
a Appropriate delegations/ authorisations	Not measured
b Processes to ensure that delegations/authorisations are regularly reviewed	Not measured
c Delegations/ authorisations are regularly reviewed	Not measured

Comments, findings and recommendations
<p>Comment: The exercise of functions under the GIPA Act needs to be supported by clear and established delegations/authorisations that are accompanied by processes to ensure any delegations remain current and valid. The roles and responsibilities of staff with GIPA Act functions are clearly defined and communicated. Section 9 of the GIPA Act provides that the making of a reviewable decision in connection with an access application may only be exercised by or with the authority (given either generally or in a particular case) of the principal officer of the agency.</p> <p>Observation</p> <p>SARA has assessed itself as 100% compliant with all categories. This desktop audit did not identify a publicly available copy of the SARA's delegations for the exercise of GIPA functions. However, in its self-assessment SARA advised new GIPA delegations are in place from 1 April 2022. The IPC's review was limited to the response from SARA as there was no publicly available information that located a copy of its published delegations.</p> <p>Recommendation 13: It is recommended that SARA publish its delegations for the exercise of GIPA Act functions as part of its proactive release of information.</p>

¹² GIPA Act Section 17(d)

8. Conclusions and recommendations

8.1 Conclusions

This audit was informed by:

- a self-assessment completed by SARA
- a desktop audit of SARA's publicly available material published to its website
- the legislative requirements of the GIPA Act.

In summary, this audit identified:

- a high level of commitment and engagement in fulfilling obligations under the GIPA Act
- significant progress towards full compliance
- opportunities to support and enable SARA to achieve compliance in respect of its GIPA Act functions.

8.2 Recommendations

Based on the findings of this audit, it is recommended that SARA implement the following within the timeframes specified:

Recommendations	
Recommendation 1	It is recommended that SARA undertake a further self-assessment of its compliance under the GIPA Act, within 12 months of being established and review its progress.
Recommendation 2	It is recommended that SARA develop a remediation plan for the implementation and finalisation of all policies and procedures it has identified as being in development with timeframes for full implementation.
Recommendation 3	It is recommended that SARA finalises and adopt its AIG within 4 months of the date of this report. Additionally, it should ensure that it takes steps to meet the requirements of section 22 of the GIPA Act for notification to the Information Commissioner.
Recommendation 4	It is recommended that SARA takes steps to amend its website to include a statement of the information that it does not make publicly available under section 6(5) of the GIPA Act.
Recommendation 5	It is recommended that SARA consider providing further clarity regarding how to access their register of government contracts on their website.
Recommendation 6	In undertaking its continued work to fulfil the requirements for contract register reporting, it is recommended that SARA have regard to the IPC's contract register assessment checklist. Additionally, SARA may wish to consider including completion of the IPC training on contracts register available as an e-learning module.

Recommendations	
Recommendation 7	It is recommended that SARA continue to mature and develop processes and procedures to ensure information continue to be proactively released.
Recommendation 8	It is recommended that SARA finalises the remaining work it has identified in its self-assessment to ensure compliance with section 8 of the GIPA Act within 4 months of the date of this report.
Recommendation 9	It is recommended that SARA finalise the remaining work identified in the self-assessment to ensure compliance with the GIPA Act.
Recommendation 10	It is recommended that SARA review and update the disclosure log on their website to ensure compliance with section 25 and 26 of the GIPA Act.
Recommendation 11	It is recommended that SARA considers accessing, and making available to staff, the IPC's eLearning modules as a mechanism to support staff in exercising GIPA functions.
Recommendation 12	It is recommended that SARA reviews the availability of the IPC's GIPA Tool as a means of managing its access applications.
Recommendation 13	It is recommended that SARA publish its delegations for the exercise of GIPA Act functions as part of its proactive release of information.

9. SARA's response to implementation of recommendations

Table 1 summarises the response by SARA to the recommendations in this report. The explanation for the status is explained at Table 2 below.

Recommendation	Status			
	Adopted in full	Adopted in part	Alternate action adopted	Not adopted
1	X			
2	X			
3	X			
4	X			
5	X			
6	X			
7	X			

Recommendation	Status			
	Adopted in full	Adopted in part	Alternate action adopted	Not adopted
8	X			
9	X			
10	X			
11	X			
12	X			
13	X			

Table 2:

Rating	Description
Adopted in full	The agency has accepted the recommendation in its entirety and will implement in full.
Adopted in part	The agency has accepted the recommendation in part. However, it has not fully realised the intent of the recommendation or only proposes to implement part of the recommendation.
Alternate action adopted	The agency has addressed the underlying issue by taking action different to the recommended action and that action is deemed acceptable to the IPC.
Not accepted	The agency has not accepted the recommendation.

10. Audit chronology

Date	Event
6 April 2022	Correspondence from IPC to SARA of proposed audit and request for completion of self-assessment tool
17 June 2022	SARA provides completed Information Access Self-Assessment
15 July 2022	IPC conduct of SARA desktop assessment
18 August 2022	Provision of draft compliance report to SARA
30 August 2022	SARA response to compliance report and recommendations

Date	Event
2 September 2022	Provision of final compliance report to SARA

11. Abbreviations

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

Acronyms or abbreviation	Explanation
AIG	Agency Information Guide
CSO	Crown Solicitor's Office
DEIT	Department of Enterprise, Industry and Trade
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 NSW
OPIAD	Overriding public interest against disclosure
SARA	State Archives and Records Authority of New South Wales

12. Legislation

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

Government Information (Public Access) Act 2009 – relevant sections:

- Section 17 – Role of the Information Commissioner
- Division 1 – Ways of accessing government information
- Division 2 – Part 3 – Agency information guides
- Division 4 – Part 3 – Disclosure logs
- Division 5 - Part 3 – Government contracts with private sector

Government Information (Information Commissioner) Act 2009 – relevant sections:

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