

Appendices

Appendix 1

Note on data sources and previous reports

The IPC's annual report on the Operation of the *Government Information (Public Access) Act 2009* is based on information submitted by NSW public sector agencies and analysed within the IPC. Data has now been collected for seven years, beginning in 2010/11.

For the first four years data was submitted by agencies in a variety of formats and then manually entered into a database within the IPC.

In mid-2015 the IPC introduced a new online GIPA Tool as a way for agencies to manage their applications, provide their annual reports to the IPC and directly upload data.

The data analysed for this Report should be considered a snapshot of agencies' compliance as at 28 November 2017 (this is the date when agencies' reported data was downloaded by the IPC from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time.

The table on page 65 records any significant changes to previous years' data. A significant change is where the data as at 28 November 2017 varies by more than 5% from previously reported data.

Data updates by agencies may affect historical data and future reports. For example, a number of agencies have reported errors in their historical data through the agency dashboard consultation. This is being rectified and updated numbers will be reflected in future reports (and the agency dashboard).

In this report, data that has been reported aligned with the following sectors:

- Government
- Councils
- Universities
- Ministers
- State owned corporations.

Previously state owned corporation data had been included with that of the government sector. They have now been separately identified in order to give greater insight into the GIPA operations of this and the government sector. Accordingly, data for the government sector reported in previous years is not comparable to data in this report.

Future data changes by agencies may affect historical data and future reports.

In 2016 the IPC began publishing agency-level GIPA data, available at ipc.nsw.gov.au/online-gipa-data-0.

In 2018 the IPC plans to publish an online, interactive dashboard to facilitate agency and community access to this data. This online data may be updated to take account of changes advised by agencies. Accordingly, the online GIPA Dashboard will represent the most up-to-date and accurate source of data on agency GIPA operations.

The annual reporting period for universities and the Department of Education is a calendar year. This calendar-year data is included in the relevant financial year to assist with cross-sector comparability. For example, GIPA data from universities' 2016 annual reporting has been treated as for the 2016/17 financial year.

Table: Effect of changes made to previous years' data

Report section	Changes made to previous years' data
Mandatory proactive release of information	No significant changes.
Authorised proactive release of information	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Informal release of information	No significant changes.
Access applications	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Year at a glance	Data is now reported aligned with five sectors, separately identifying state owned corporations.
How many applications were lodged?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Invalid applications	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Who applied?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
What information was asked for?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Did applicants get what they asked for?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
How quickly were decisions made?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
How was the public interest test applied?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
How were decisions reviewed?	Data is now reported aligned with five sectors, separately identifying state owned corporations.
Were applications transferred between agencies?	Data is now reported aligned with five sectors, separately identifying state owned corporations.

Appendix 2

The Legislative Framework

Government Information (Public Access) Act 2009 (GIPA Act)

The object of the GIPA Act is to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective by:

- authorising and encouraging the proactive public release of government information by agencies;
- giving members of the public an enforceable right to access government information; and
- ensuring that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act applies to government departments and agencies, state owned corporations, local councils, ministers and their staff, and universities.

The guiding principle of the GIPA Act is to make information more accessible to the public and the GIPA Act embodies the general presumption that the disclosure of information is in the public interest unless there is a strong case to the contrary.



1. Mandatory proactive release

The mandatory proactive release of information is one of the GIPA Act's four pathways for information release and access. Through this pathway, the GIPA Act requires NSW public sector agencies to release a prescribed set of information to the public, known as open access information. This information must be made publicly available online and free of charge. Open access information of ministers may be made available on the website of the relevant department.

The benefit of mandatory proactive release is that the pathway ensures that a minimum, consistent set of information is freely available to the public, which is regularly reviewed and updated to maintain relevance and currency. Mandatory proactive release is an important vehicle to achieve better service delivery through information access, transparency and increased citizen input to government policy and service delivery.

2. Authorised proactive release

The GIPA Act authorises and encourages agencies to make information available unless there is an overriding public interest against disclosure.

Agencies (except ministers) are required under the GIPA Act to, at least annually, review their program for the proactive release of information and identify additional kinds of information that should be made publicly available. These agency reviews are not merely a reporting obligation. They provide the tool to drive the continuous release of information under this pathway. This information can be made publicly available in any manner that the agency considers appropriate either free or at the lowest reasonable cost.

Through this pathway, agencies have a responsibility to promote policies and practices that ensure as much information as possible is made publicly available.

The aim of proactive release is to maximise the amount of information that is released by agencies. This requires creating a culture where information release is a matter of course. The proactive release of information has many benefits, including a more informed community that is better able to engage and influence the development and delivery of services, agency operations and broader policy and community debates.

3. Informal release

The GIPA Act enables agencies to release government information in response to an informal request for information, unless there is an overriding public interest against disclosure.

This pathway promotes the transition to a system which will result in the general release of government information.

4. Formal access applications

The GIPA Act provides citizens with a right to apply for and access most government information, unless there is an overriding public interest against disclosure (section 9). The GIPA Act outlines a formal process that must be followed by applicants and agencies. The steps for applicants include:

- putting an application in writing;
- stating that the application is seeking information under the GIPA Act;
- including a postal address in Australia;
- explaining clearly the information that is being requested; and
- paying an application fee of \$30.

Agencies must assess each application that is received. For valid access applications, agencies must apply the public interest balancing test and consider the factors for and against the disclosure of the information that is being requested.

The main benefits of the formal access pathway are that:

- the right to seek access is legally enforceable;
- agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application;
- agencies must apply the public interest balancing test and consult with third parties to whom the information relates; and
- applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by NCAT.

Section 125 of the GIPA Act requires agencies to report to Parliament annually on their obligations under the GIPA Act, including reporting on GIPA data. This mandated information is set out in clause 7 (a), (b), (c) and (d) of the *Government Information (Public Access) Regulation 2009* (the Regulation). Schedule 2 of the Regulation sets out the prescribed form for Clause 7(d) reporting through Tables A – I.

Government Information (Public Access) Regulation 2009

The GIPA Regulation:

- prescribes additional open access information that local authorities, Ministers, departments and statutory bodies must make publicly available;
- sets out the statistical information regarding formal applications that agencies must include in their annual reports;
- in the case of an access application relating to a school, extends the period in which the application must be decided if the usual 20-day period for deciding the application occurs during the school holidays;
- specifies the corresponding access to information laws of other Australian jurisdictions under which information may be exempt (this is a relevant public interest consideration against disclosure under section 14);
- declares certain bodies to be public authorities for the purpose of the GIPA Act;
- declares certain entities to be sub-agencies and parent agencies for the purpose of access applications; and
- provides that records held by the Audit Office or the Ombudsman's Office that were originally created or received by another agency are taken to be held by the original agency.

Government Information (Information Commissioner) Act 2009

The system of public access to information is overseen by the Information Commissioner, established under the *Government Information (Information Commissioner) Act 2009*.

Under the GIIC Act the Information Commissioner's role includes:

- promoting public awareness and understanding of the Act;
- providing information, advice, assistance and training to agencies and the public;
- dealing with complaints about agencies;
- investigating agencies' systems, policies and practices; and
- reporting on compliance with the Act.

Under section 37 of the GIIC Act, the Information Commissioner is required to provide an annual report to Parliament on "the operation of the *Government Information (Public Access) Act 2009*, generally, across all agencies".

This report fulfils the Information Commissioner's obligation in this regard.