



Searches for information

Section 53 of the GIPA Act sets out the requirement to conduct searches:

53 Searches for information held by agency

(1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency's searches must be conducted using the most efficient means reasonably available to the agency.

(3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

(4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the State Records Act 1998 or contrary to the agency's established record management procedures.

(5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources.

The expression 'government information' is defined in section 4 of the GIPA Act as 'information contained in a record held by an agency.'

Before deciding that it does not hold information, an agency must comply with the requirements of section 53(2) of the Act. The requirements are:

- undertake such reasonable searches as necessary to locate the information requested; and
- use the most efficient means reasonably available to the agency.

In *Smith v Commissioner of Police [2012] NSWADT 85*, Judicial Member Isenberg said at paragraph 27:

In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:

(a) are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so,



information
and privacy
commission
new south wales



(b) have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case.

When considering whether there are reasonable grounds to believe that information exists and whether searches to locate information were reasonable, the facts, circumstances and context of the application is relevant. Key factors in making an assessment about reasonable searches include "the clarity of the request, the way the agency's recordkeeping system is organised and the ability to retrieve any documents that are the subject of the request, by reference to the identifiers supplied by the applicant or those that can be inferred reasonably by the agency from any other information supplied by the applicant" (*Miriani v Commissioner of Police, NSW Police Force [2005] NSWADT 187 at [30]*).

The GIPA Act does not require an agency to include details of its searches in a notice of decision. However, it is good practice for written decisions to clearly explain what the search processes were, what was found, an explanation if no records were found, what was released and what was held back. Details of searches should include where and how the agency searched, a list of any records found – and if appropriate a reference to the business centre holding the records, the key words used to search digital records (including alternative spellings used) and a description of the paper records that were searched.