







## Section 120 Offence of concealing or destroying government information

Elements of the offence	Consideration
Person	<b>Person</b> is defined in clause 1 or Schedule 4 of the GIPA Act. Is the person covered by the definitions?
Destroys conceals or alters.	Records are not available, have been amended or have been destroyed.
Any record	<b>Any record</b> is defined in clause 10 of Schedule 4 of the GIPA Act.
Of government information	<b>Government information</b> is defined in section 4 of the GIPA Act.
Purpose of preventing disclosure of the information.	<b>Disclose</b> is defined in clause 1 of Schedule 4 of the GIPA Act. Need to show purpose to prevent disclosure.
As authorised or required by GIPA Act.	Need to show government information was authorised to be disclosed under GIPA Act.

### The IPC's role if a person alleges an offence occurred?

A person who alleges an offence has occurred may make a complaint to the Information Commissioner.

The Information Commissioner has, under the *Government Information (Information Commissioner) Act 2009* (GIIC Act), a distinct role when receiving complaints about the conduct of an agency in the exercise of functions under the GIPA Act.

The Information Commissioner may make preliminary inquiries including seeking further information from the complainant for the purposes of deciding how to deal with the complaint.

These inquiries may provide further evidence in relation to the allegation that an offence has occurred.

The Information Commissioner will assess the complaint and evidence to decide whether to deal with the complaint or decline to deal with the complaint.

### Dealing with a complaint

The Information Commissioner may deal with the complaint in terms of section 18 of the GIIC Act, and deal with the complaint by taking appropriate measures to assist in resolving the complaint in terms of section 19 of the GIIC Act. The measures include:

- Providing information to the parties to the complaint
- Undertaking discussions with the parties to facilitate a resolution, including by conciliation.

If the complaint is not amenable to resolution, or if the resolution measures are not appropriate for the complaint, the Information Commissioner may investigate.

### IPC investigating

If the Information Commissioner decides to investigate the complaint in terms of section 22 of the GIIC Act then the process involves formal notification to both the complainant and the agency.

The Information Commissioner in conducting the investigation will give the parties an opportunity to make submissions on the subject matter of the investigation and may interview both the complainant and any other persons who may be able to inform the investigation.

It is also a requirement that if the Information Commissioner considers there are grounds for adverse comments in respect of any person that the person be informed of the substance of the comments and provided with an opportunity to make submissions on those comments.

If the Information Commissioner finds in an investigation that the conduct of an agency is conduct of a kind that constitutes a failure to exercise its functions properly in accordance with any provision of an Information Act, the Information Commissioner must report the matter to:

- The Minister responsible for the agency, and
- The principal officer of the agency, and
- Where the conduct concerns the conduct of a public service employee, the Secretary of the Department of Premier and Cabinet.

The Information Commissioner may, following the investigation of a complaint, give a copy of the report to the complainant and the agency to whose conduct the report relates.

The agency on receiving a copy of the report may, but if requested by the Commissioner must, notify the Commissioner of any action taken or proposed in relation to the report.

Section 28(6) of the GIPA Act makes clear that the Information Commissioner cannot bring proceedings for an offence under the GIPA Act.

## Referral to the DPP or Attorney General

If the Information Commissioner has, following an investigation, formed a view that an offence may have been committed then the Information Commissioner would refer the matter to the DPP and notify the Attorney General.

The Information Commissioner would, in making that referral, provide any evidence gathered that had led her to drawing that conclusion to the DPP.

## Who makes the decision to prosecute an offence?

The DPP will consider the evidence and determine whether an offence is prosecutable.

The decision to prosecute an offence under the GIPA Act can only be made with the authority of the DPP or the Attorney General, as provided for by section 128(2) of the GIPA Act.

## Where is an offence prosecuted?

If the DPP or the Attorney General decide that an offence under the GIPA Act is to be prosecuted, the proceedings for an offence may be dealt with summarily before the Local Court as provided for by section 128(1) of the GIPA Act.

## 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.*