



## Open access information under the GIPA Act – agency requirements

Fact sheet  
August 2017

Under the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2009* (GIPA Regulation), all NSW agencies are required to make a range of open access information publicly available, unless there is an overriding public interest against disclosure of the information (OPIAD).

Open access information is to be publicly available free of charge on the agency's website (unless to do so would impose unreasonable additional costs on the agency).

This fact sheet outlines open access for:

1. Ministers
2. Departments
3. Statutory bodies
4. Councils
5. State-owned corporations.

### The benefit of open access information

The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information sharing practices across NSW agencies. It provides members of the public with an immediate right of access to important government information.

In line with the GIPA Act's objects,<sup>1</sup> mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair and effective.

It does this by placing the onus on agencies to push information into the public domain and:

- promotes open discussion of public affairs, enhancing government accountability and contributing to informed debate on issues of public importance;
- informs the public about agency operations and their policies and practices for dealing with members of the public; and
- ensures effective oversight of public funds.

### What open access information are agencies required to make publicly available?

The GIPA Act defines open access information as:<sup>2</sup>

- an agency information guide (AIG), describing an agency's structure, functions, how those functions affect the public, the type of information held and how it is made publicly available<sup>3</sup>. See the Information and Privacy Commission's (IPC) [Guideline 6: Agency Information Guides](#)
- documents tabled in parliament by or on behalf of an agency<sup>4</sup>
- an agency's policy documents that are related to its functions and are likely to affect members of the public such as rules, guidelines, statements of how administered schemes will operate and procedures to investigate contraventions (but are not legislative instruments)<sup>5</sup>
- a disclosure log of information released under formal access applications that may be of general public interest.<sup>6</sup> See IPC's [Good practice for disclosure logs](#)
- a register of contracts an agency has with private sector entities for \$150,000 or more.<sup>7</sup> See the IPC's e-learning module, [Contract Registers under the GIPA Act](#)
- a record of the open access information that is not made public due to an overriding public interest against disclosure<sup>8</sup>
- an advertising compliance certificate issued by the head of a government agency under the *Government Advertising Act 2011*.<sup>9</sup>

Some exceptions apply and these are summarised in this fact sheet.

### How should open access information be made available?

All open access information must be available free of charge on an agency's website, unless this would impose unreasonable costs. If an agency decides not to make information available for free on its website, at least one alternative method of access must be free of charge. Agencies may charge for open access information only if it is available for free in at least one other format. See the IPC's [Fact Sheet — GIPA Act Fees and Charges](#).

Particular arrangements for open access information are specified for ministers and councils.

### Additional requirements on some agencies

Agencies should confirm if they are subject to these requirements by referring to:

- the GIPA Act;
- the GIPA Regulation;
- the agency and department definitions in section 3 of the *Annual Reports (Departments) Act 1985* and Schedule 3 of the *Public Finance and Audit Act 1983*;
- the IPC's [What is an Agency?](#)

### Ministers

Additional open access information for **ministers** may be made available on the website of the department for which the Minister is responsible<sup>10</sup> and include:<sup>11</sup>

- any media release the Minister issues; and
- specified details concerning the Minister's overseas travel.

**Note:** *Ministers and their staff are not required to publish an AIG under the GIPA Act.*

### Departments

Additional open access information for **government departments** includes:<sup>12</sup>

- a list of the department's major assets and acquisitions;
- the total number and total value of properties the department disposed of during the previous financial year;
- the department's guarantee of service (if any);
- the department's code of conduct (if any); and
- any standard, code or other publication applied, adopted or incorporated by reference in any Act or statutory rule the Department administers.

**Note:** *The Department of State and Regional Development is not required to include any information in its contracts register about a government contract that involves the provision of industry support.*<sup>13</sup>

### Statutory bodies

Additional open access information for **statutory bodies** (within the meaning of the *Annual Reports (Statutory Bodies) Act 1984*) includes:

- the total number and total value of properties the statutory body disposed of during the previous financial year; and
- the statutory body's guarantee of service (if any).

### Councils

Additional open access information for **councils** includes:<sup>14</sup>

- information about the local authority, such as annual reports (including for bodies exercising functions delegated by the local authority), EEO management plans and any codes referred to in the *Local Government Act 1993*;
- information in returns of interests (pecuniary interests) or other returns filed by councillors or staff;<sup>15</sup>
- agendas and papers of council meetings;
- land registers, registers of delegations and current declarations of disclosures of political donations;
- plans and policies such as for approvals, management of community land and environmental planning instruments; and
- information about development applications including associated documents and records of decisions.

The Chief Executive of the Office of Local Government may, in consultation with the Information Commissioner, adopt mandatory provisions for inclusion in council's agency information guides.<sup>16</sup> If so, councils must include the mandatory provision unless the Chief Executive approves otherwise.

A councillor or a designated person must complete a return disclosing their pecuniary interests.<sup>17</sup> These returns must be provided as open access information.<sup>18</sup> The IPC has provided guidance to councils about how to interpret this requirement in [Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the GIPA Act](#). The guideline assists local councils to determine public interest considerations when deciding whether to disclose information and supplements the GIPA Act.

The IPC has also published [GIPA Guideline 3: For local councils – personal information contained in development applications: What should not be put on council websites](#), as well as resources on copyright and compliance with the GIPA Act to assist councils with meeting their open access information requirements. Councils should refer to the IPC's [Copyright and the GIPA Act: Frequently Asked Questions for councils](#).

In addition to information provided on a website, councils must also make open access information available by:<sup>19</sup>

- making the information available for inspection free of charge by any person at the office of the Council during ordinary office hours; and
- providing a copy of a record containing the information, or the facilities to make a copy of the record, to any person either free of charge or for a

charge not exceeding the reasonable cost of photocopying.

A council may archive records that contain open access information in accordance with their record management practices and procedures, but is required to retrieve archived records and make the information available as soon as reasonably practicable after a request for access is made.<sup>20</sup>

### State-owned corporations

There are no additional requirements on state-owned corporations.

However, state-owned corporations and their subsidiaries are not required to include any information in their contracts register about a contract that relates to activities engaged in by the corporation or subsidiary in a market in which it is in competition with any other person.<sup>21</sup>

**Note:** *Landcom is not required to include any information in its contracts register about a government contract for the sale of land.*<sup>22</sup>

### Does the public interest test apply to open access information?

Yes. Sometimes an agency may partially or fully withhold open access information due to an OPIAD. In this case, a record of the open access information it does not make publicly available must be published on the agency's website.<sup>23</sup>

An agency must facilitate public access to open access information by deleting information from a copy of a record if inclusion of the matter would otherwise result in there being an OPIAD and it is practicable to delete the matter.<sup>24</sup>

The GIPA Act does not require or permit an agency to make open access information available in any way that would constitute an infringement of copyright.<sup>25</sup>

### What is not open access information?

Open access information does not apply to "excluded information" under the GIPA Act. Excluded information is identified by reference to certain agency functions.<sup>26</sup>

These functions are listed in Schedule 2 to the GIPA Act and include:

- judicial and prosecutorial functions of a court or the office of Director of Public Prosecutions;
- complaints handling and investigative information of certain agencies;
- competitive and market sensitive information of certain agencies; and
- other functions identified in Schedule 2.

### 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)

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- <sup>1</sup> Section 3 of the GIPA Act
  - <sup>2</sup> Section 18 of the GIPA Act
  - <sup>3</sup> Section 20 of the GIPA Act
  - <sup>4</sup> Section 18(b) of the GIPA Act.
  - <sup>5</sup> Section 23 of the GIPA Act
  - <sup>6</sup> Sections 6, 18, 25, 26 of the GIPA Act
  - <sup>7</sup> Section 27 of the GIPA Act
  - <sup>8</sup> Section 18(f) of the GIPA Act
  - <sup>9</sup> Clause 3(2) of the GIPA Regulation
  - <sup>10</sup> Part 3, clause 8 of the GIPA Regulation
  - <sup>11</sup> Part 3, clause 5(1) of the GIPA Regulation
  - <sup>12</sup> Part 3, clause 5(2) of the GIPA Regulation
  - <sup>13</sup> Section 38 of the GIPA Act
  - <sup>14</sup> Clause 3 and Schedule 1 of the GIPA Regulation
  - <sup>15</sup> Schedule 1 of the GIPA Regulation
  - <sup>16</sup> Section 20(3) of the GIPA Act
  - <sup>17</sup> Section 449 of the LG Act
  - <sup>18</sup> Section 6 of the GIPA Act and Schedule 1, [2](2)(a) of the GIPA Regulation
  - <sup>19</sup> Clause 4 of the GIPA Regulation
  - <sup>20</sup> Clause 4 of the GIPA Regulation
  - <sup>21</sup> Schedule 1 of the GIPA Regulation
  - <sup>22</sup> Section 40 of the GIPA Act
  - <sup>23</sup> Sections 6(1), 6(5) and 18(f) of the GIPA Act
  - <sup>24</sup> Section 6(4) of the GIPA Act
  - <sup>25</sup> Section 6(6) of the GIPA Act
  - <sup>26</sup> Schedule 2 of the GIPA Act; Section 19 of the GIPA Act