



office of the
information
commissioner
new south wales

Compliance report: Findings and recommendations

Review of the NSW Police Force's compliance with the
Government Information (Public Access) Act 2009.

28 June 2011

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GIPA Act compliance report – Police Force – June 2011

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1. Key areas for improvement

The NSW Police Force (Police Force) does not currently comply with all of its obligations under the *Government Information (Public Access) Act 2009* (GIPA Act).

In order to assist the Police Force to comply with the GIPA Act, the Office of the Information Commissioner (OIC) has identified five key areas for improvement:

1. improve resourcing for the Information Access Unit,
2. provide better assistance to applicants,
3. better understand and apply the public interest test,
4. conduct third party consultations when appropriate,
5. review information that may be open access information or can be proactively released.

1.1 The Information Access Unit

The Police Force's Information Access Unit (IAU) deals with an extremely high volume of requests for information under the GIPA Act.

The IAU does not appear to have sufficient resources to deal with its high caseload in accordance with the GIPA Act. The OIC suggests the Police Force recruits additional staff members to the IAU and reviews the training, information technology solutions and support structures provided to the IAU to ensure that the Police Force can meet its obligations under the GIPA Act.

1.2 Assistance to applicants

The Police Force has an obligation to assist applicants to exercise their right to access government information. However, the high caseload and limited resources available to the IAU appear to have resulted in workplace processes that focus on expediently processing requests for information without adequately addressing the obligation to provide assistance.

The OIC suggests that the Police Force review its processes to ensure that it is assisting applicants to exercise their right to access government information. Reviewed processes should include:

- how applicants can request access to information;
- how applicants can pay for processing fees and charges;
- the costs of documents available for purchase;
- how and when the Police Force contacts applicants to clarify or discuss requests for information.

1.3 Public interest test

The public interest test is central to the operation of the GIPA Act. The Police Force does not currently comply with its obligation to apply the public interest test in the way required by the GIPA Act. If the public interest test is not correctly understood and applied by the Police Force, and/or if the Police Force continues to apply an exemption model as provided for under the *Freedom of Information Act 1989*, then compliance with the GIPA Act will not be achieved.

The OIC has provided training to the IAU that included a review of the principles of the public interest test and their application to decision making. The OIC suggests that the Police Force ensures the public interest test is understood and applied by all relevant staff members when deciding whether to release information proactively, informally, in response to an access application or as open access information. In practice, this may include:

- reviewing the principles and application of the public interest test regularly;
- ensuring new staff are trained in the public interest test;
- updating or ceasing to use resources that were developed before the GIPA Act came into effect;
- providing relevant staff members with resources that reflect the principles in the GIPA Act;
- updating processes and templates to ensure that they reflect the public interest test.

1.4 Third party consultations

The GIPA Act requires agencies to consult with third parties in relation to certain requests for information.

Some staff members from the Police Force do not consult with third parties as required by the GIPA Act because they do not have the capacity to do so. Other staff members are not aware that third party consultation is a statutory requirement in certain situations. The result of a failure to conduct a third party consultation is often a decision to refuse access to third party information, regardless of whether this decision is appropriate in light of the facts and circumstances of the application.

The OIC suggests that the Police Force ensures that the IAU is properly resourced, staff members are adequately trained and relevant processes are updated to enable the Police Force to comply with the obligation to conduct third party consultations when required.

1.5 Open access information and proactive release

All agencies must make their open access information publicly available, generally on a website maintained by the agency, subject to the public interest test. Members of the public should have access to an agency's open access information without needing to apply for the information from the agency.

The Police Force does not currently comply with the open access requirements in the GIPA Act. In particular, the Police Force does not have available on its website:

- policy documents,
- a complete disclosure log that includes information about access applications received from individual members of the public, or
- a record of open access information that is not made publicly available by the agency.

The OIC suggests that the Police Force focuses on making its open access information available on the www.police.nsw.gov.au website. While this process is underway, the OIC suggests that the Police Force identifies its open access information and provides a list of its open access information (for example, by naming relevant policy documents) on its website. This will assist applicants who seek access to open access information to identify which documents are currently publicly available. As a number of formal access applications and informal requests for information received by the Police Force are requests for open access information, providing this information on the website may also result in some reduction of the IAU's caseload.

Additionally, the OIC suggests that the Police Force identifies information that may be proactively released on its website and composes a plan for the proactive release of that information.

2. Executive summary

2.1 Executive summary

This is a report of the OIC's findings and recommendations arising from its 2010 compliance review into the Police Force. The review was instigated in response to concerns held by the OIC about the Police Force's compliance with the GIPA Act. The GIPA Act came into force on 1 July 2010.

The object of the GIPA Act is to open government information to the public by:

- authorising and encouraging the proactive release of information
- giving members of the public an enforceable right to obtain government information and
- only restricting access to government information when there is an overriding public interest against disclosure.

The GIPA Act confers both obligations and discretions on agencies. Agencies must exercise discretions in accordance with the objectives of the GIPA Act.

This report outlines the concerns that triggered the compliance review, the process followed by the OIC in conducting the compliance review, the OIC's findings and recommendations, and a number of follow-up actions to be undertaken by the OIC and the Police Force.

The OIC's recommendations in response to the compliance review are set out at **section 3.1** of this report. The OIC has also provided observations at **section 3.2** of this report, which consist of suggested improvements to the Police Force's internal processes and procedures that are intended to further assist the Police Force to meet its compliance obligations under the GIPA Act.

The OIC's provisional compliance report was sent to the Police Force on 8 April 2011. The Police Force provided a response to the OIC's recommendations and observations, which was received by the OIC on 25 May 2011. This response together with the OIC's comments on the response is provided as **attachment 3** to this report.

The compliance review was structured around the OIC's [compliance checklist](#), which is available on the OIC's website. A copy of the compliance checklist, annotated with the OIC's feedback, is provided as **attachment 1** to this report. The structure of **section 6** of this report follows the order of requirements set out in the compliance checklist.

A glossary of abbreviations is provided at **section 8** of this report.

The OIC would like to thank the staff of the Police Force's Information Access Unit for their courteous conduct, cooperation and willingness to participate with the compliance review process.

3. Summary of recommendations and observations

3.1 Recommendations

Recommendation one

The Police Force identifies and makes publicly available on its website the Police Force's policy documents. In light of the resource constraints faced by the Police Force, the OIC recommends that these documents are made available on the Police Force website no later than 1 July 2011.

Recommendation two

The Police Force reviews all past, current and future GIPA applications for non-personal information, whether received from media, the opposition, individuals or other applicants, to decide whether information about the application should be included in the Police Force's disclosure log.

Recommendation three

The Police Force provides on its website a record of the open access information that the Police Force does not make publicly available.

Recommendation four

The Police Force delegates a person responsible for coordinating the proactive release of information, or if such a delegation is already in place, circulates the name and contact details of that person to all staff of the Police Force.

Recommendation five

The Police Force develops a program for proactively releasing government information and presents a copy of that plan to the OIC for feedback.

Recommendation six

The Police Force implements a process to review whether an application without an application fee is intended to be an informal request, or whether the application is an invalid access application. As a matter of good practice, the Police Force should call the applicant to discuss whether they intended to make an informal request or a formal application and, if the application is found to be a valid access application, the Police Force could consider waiving the processing fee.

Recommendation seven

The Police Force accepts informal requests for information by fax, email or post.

Recommendation eight

The Police Force provides information on its website about what type of correspondence will be accepted by email or fax and what type must be sent by post.

Recommendation nine

The Police Force decentralises the application process so that informal requests and access applications can be submitted to any local area command (LAC) and payment made at a LAC, and the LAC advises the IAU when an application or payment is made.

Recommendation ten

The Police Force implements a process to ensure that access applications are reviewed for validity based solely on the relevant provisions in the GIPA Act.

Recommendation eleven

The Police Force assists applicants who make invalid applications to make valid access applications, including by communicating with such applicants by telephone or email as appropriate.

Recommendation twelve

The Police Force requires staff to comply with section 54 of the GIPA Act. The OIC recognises that there will be times when it is unreasonable for the Police Force to consult with third parties, however this is not the default position provided for in the GIPA Act. The OIC recommends that the Police Force develop internal guidelines about when it will and will not consult and provide these guidelines to the OIC for feedback. Once finalised, the OIC recommends that these guidelines be incorporated into the compliance resource referred to at **section 5.5** of this report.

Recommendation thirteen

The Police Force accepts and processes informal requests and access applications for incident reports as GIPA Act applications. In the alternative, the cost of processing a request for an incident report by the Insurance Services Unit is reduced to no more than \$30, to reflect the application fee payable by an applicant who submits an access application.

Recommendation fourteen

The Police Force provides the reasons for its decisions and findings on any material questions of fact underlying those reasons in its decision records when it refuses to provide access to information.

Recommendation fifteen

The Police Force implements processes to ensure that staff always obtain the consent of the other agency before transferring an access application.

Recommendation sixteen

The Police Force implements processes to ensure that the public interest test is correctly applied when deciding whether to release information. This requires the Police Force to identify the public interest factors in favour of disclosing information and the public interest factors against disclosure, and to balance these factors to decide whether there is an overriding public interest against disclosure. All staff should immediately stop referring to the FOI Act and its exemption model and consider the public interest test in light of the facts and circumstances of each application.

Recommendation seventeen

The Police Force immediately ceases using the FOI Manual when dealing with access applications under the GIPA Act.

3.2 Observations

Observation one

The Police Force could improve its processes around searching for information by requiring all Police Force staff to cooperate fully and efficiently with search requests issued by the IAU. In particular, the response rate of LACs could be monitored and if the LAC does not respond satisfactorily this could be recorded and reported to the relevant supervisor for their action.

Observation two

The Police Force would benefit from implementing a process to ensure that records held by a LAC can be obtained and returned to the IAU by any member of the LAC. Records should be accessible by all members of the LAC rather than attached to individual officers.

Observation three

The Police Force should recruit additional staff to resource the IAU to assist the IAU to process all applications in compliance with the GIPA Act.

Observation four

The Police Force is encouraged to develop an in-house resource for all relevant Police Force staff to use when dealing with access applications under the GIPA Act. This resource should be based on the GIPA Act, may build off the information on the OIC's website, and could be reviewed by the OIC before being distributed to Police Force staff.

Observation five

The Police Force would benefit from regular staff meetings between IAU staff, at least on a monthly basis, to discuss access applications, the application of the public interest test, feedback and assistance from the OIC and other relevant discussion points.

4. Reasons for the compliance review

4.1 The OIC's role under the GIPA Act

Under section 17 of the GIPA Act, the Information Commissioner's roles include:

- promoting the object of the Act
- providing information, advice, assistance and training to agencies about the GIPA Act
- assisting agencies in connection with the exercise of their functions under the GIPA Act and
- monitoring, auditing and reporting on the exercise by agencies of their functions under, and compliance with, the GIPA Act.

In line with these functions, the OIC conducts compliance reviews to assist agencies to comply with the GIPA Act. A compliance review may be triggered by a complaint or a series of complaints about an agency, or may be initiated by the OIC as part of its annual audit program.

Section 17 of the GIPA Act – Role of Information Commissioner

The Information Commissioner has the following functions in connection with the operation of this Act:

- (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
- (b) to provide information, advice, assistance and training to agencies and the public on any matters relevant to this Act,
- (c) to assist agencies in connection with the exercise of their functions under this Act, including by providing services to assist with the lodgment, handling and processing of access applications,
- (d) to issue guidelines and other publications for the assistance of agencies in connection with their functions under this Act,
- (e) to issue guidelines and other publications for the assistance of the public in connection with their rights under this Act (including rights of review),
- (f) to review decisions of agencies pursuant to Part 5,
- (g) to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, this Act,
- (h) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

4.2 What triggered the compliance review?

From 1 July 2010 to 12 October 2010, the OIC received over 75 enquiries and 14 requests for assistance related to the Police Force. Of the requests for assistance, 12 were requests for the OIC to review decisions made by the Police Force in relation to access applications, and two were general complaints about the Police Force's compliance with the GIPA Act.

In the course of conducting these reviews and complaints the OIC spoke to applicants and complainants, discussed the matters with the Police Force and where relevant reviewed the Police Force's GIPA files. Information gathered in this way raised significant concerns about the Police Force's compliance with the GIPA Act. These concerns are set out in the table below (*Table 1 – compliance concerns*).

Table 1 – compliance concerns:

Our concern	Details
Explanation of the public interest considerations for and against disclosure	<p>The decisions reviewed by the OIC provided little reasoning or factual context to support why the Police Force decided to apply considerations against disclosure.</p> <p>The decisions also failed to provide the public interest considerations in favour of disclosure.</p>
The public interest test	<p>The Police Force states in its decision records that the public interest is applied when deciding access applications. Despite this, there was no evidence of public interest considerations in favour of disclosure being taken into account when the Police Force balanced the public interest test, or a clear explanation of <i>how</i> the public interest considerations against disclosure were found to override the public interest considerations in favour of disclosure.</p>
Third party consultations	<p>Section 54 of the GIPA Act sets out the circumstances when third party consultation is required. Every decision record that the OIC reviewed which related to third party information contained the following phrase:</p> <p><i>Whilst the Act requires consultation with other parties concerned in this matter, it is my opinion that when considering the nature of the information and the circumstances upon which it came into existence the expectation of the New South Wales Police Force to engage in a consultation process is not practicably reasonable.</i></p> <p>It appeared that the Police Force routinely inserted this phrase into its decisions in order to avoid complying with the requirement to consult with relevant third parties.</p>
Information about a police investigation or a matter that is before the courts	<p>The OIC's file work indicated that the Police Force's consideration of a request for information about a police investigation or a matter that is before the courts only extended to considering whether the investigation was ongoing. If so, information was not disclosed.</p> <p>Of particular concern was evidence that, in forming this decision, the Police Force did not consult with the relevant investigator or prosecutor, and at times did not even sight the information requested.</p>
Lack of consideration given to the facts and circumstances of individual applications	<p>Police Force decisions reviewed by the OIC shared similar, and at times identical, wording.</p> <p>There is great value in using templates and precedents in commonly drafted documents to avoid 'reinventing the wheel'. However, some decisions reviewed by the OIC were almost identical despite the different circumstances surrounding each. There was insufficient evidence of proper consideration of the facts and circumstances of each matter.</p>

In light of these concerns, the OIC decided to conduct a compliance review of the Police Force.

The review was not, however, limited to these issues. **Section 6** of this report sets out the GIPA Act requirements that were addressed in the compliance review.

5. Compliance review process

5.1 Agreed process

In light of the OIC's concerns set out in **section 4.2** of this report, the Information Commissioner Deirdre O'Donnell met with the NSW Police Commissioner Andrew Scipione on 13 October 2010. Following that meeting, in order to assist the Police Force comply with the GIPA Act, the two agencies agreed on the following action plan:

- the OIC would return appropriate decisions to the Police Force for the Police Force's reconsideration, in accordance with section 93 of the GIPA Act. The Police Force would not charge the \$40 internal review fee for these decisions, and would provide a new decision to the applicant, with a copy to the OIC, within 20 working days.
- the OIC would visit the Police Force and conduct a one-day compliance review. This would include reviewing randomly selected open and closed files and conducting face-to-face meetings with staff members of the Police Force. The compliance review would be structured around the OIC's [compliance checklist](#), which is publicly available on the OIC's website.
- the OIC would provide free training to all members of the Police Force on compliance with the GIPA Act.
- the Police Force would draft a compliance resource for use within the Police Force and among other Police Force staff. The OIC would review and provide feedback on this resource.

5.2 Returned files

5.2.1 Criteria for returning files

On 3 November 2010, the OIC returned four decisions to the Police Force for reconsideration.

The OIC's letter to the Police Force returning these four decisions is provided as **attachment 2** to this report, with personal information removed.

5.2.2 Outcome of the Police Force's reconsidered decisions

The table below (*Table 2 – outcome of reconsidered decisions*) summarises the outcomes of the Police Force's reconsideration of the returned files.

Table 2 – outcome of reconsidered decisions:

OIC ref	Police Force ref	Police Force's original decision	Police Force's reconsidered decision
10-045	101539	<ul style="list-style-type: none"> Refused in full because a court matter was pending. 	<ul style="list-style-type: none"> Most of the requested information was released in full. Applicant claimed that other information should exist and there were some inconsistencies in the information that was released. However, he did not ask the OIC to continue the review. The file was closed.
10-049	101382	<ul style="list-style-type: none"> Very limited release – information about a third party was not released; the Police Force did not consult with the third party. An authorisation letter from the third party was forwarded to Police Force with the reconsideration request. 	<ul style="list-style-type: none"> Greater release was provided. Applicant was satisfied with the reconsidered decision.
10-062	101528:MG	<ul style="list-style-type: none"> Information not released included information about statements of the applicant's two young children and his son's friend, despite authorisation letters provided to the Police Force with the access application. No consultation was carried out. Police Force applied the considerations in section 14 of the GIPA Act as though they were exemptions. 	<ul style="list-style-type: none"> Greater release – witness statements from the access applicant's children and their friend were released. Applicant was satisfied with the reconsidered decision.
10-069	101525:MP	<ul style="list-style-type: none"> Some information was released in full. Other information relating to penalty notices issued by the same Police Officer over the same shift were not released even though applicant did not request personal information or complete records and specified in her request that she only wanted 'time , place and nature' information to be released. 	<ul style="list-style-type: none"> The other penalty notices were released with personal information of third parties redacted. Applicant was satisfied with the reconsidered decision.

5.3 On-site review

On 21 October 2010, two staff from the OIC (the reviewers) attended the Police Force's premises. The reviewers reviewed over 30 randomly selected files and met with Police Force staff, including the Manager, Acting Coordinator, Team Leaders, Review Officers and Assistant Review Officers.

The review was conducted against the OIC's compliance checklist. Most of the Police Force's responsibilities under the GIPA Act were addressed via discussions with Police Force staff members and the on-site file reviews. Certain responsibilities, including transitional arrangements, reporting requirements and processing fees, were not addressed in this compliance review. Instead, the OIC focused on reviewing the Police Force's compliance with open access information, proactive and

informal release of information, access applications, internal reviews, excluded information, notices and the public interest test.

A copy of the completed compliance checklist, incorporating the OIC's feedback to the Police Force, is provided as **attachment 1** to this report.

5.4 Training

To assist the Police Force comply with the GIPA Act, the OIC delivered training on the GIPA Act to the IAU on Tuesday 8 February 2011. The OIC's Manager of Policy and Good Practice delivered the training.

The objectives of the training were to enable participants to:

- develop and demonstrate a thorough understanding of the principles that underpin the GIPA Act
- apply the public interest test in a variety of circumstances
- be thoroughly familiar with the ways government information can be released and
- develop sound decision-making processes in relation to the release of government information.

The topics covered included:

- changes from the FOI regime to GIPA Act
- what is open access information and how do we make it easily available?
- proactive release of information
- applying the public interest test
- consultation with third parties and
- formal access applications.

The OIC is keen to continue to assist the Police Force to comply with the GIPA Act, and would welcome the opportunity to provide further training in 2011 and 2012.

5.5 Compliance resource

As set out at **section 5.1** of this report, the Police Force is to draft a GIPA Act compliance resource, such as a staff manual, for use within the Police Force and among other Police Force staff. The OIC will review and provide feedback on this resource.

The OIC expects to receive a draft copy of this compliance resource in 2011.

6. Findings

The structure of the OIC's findings follows the structure of the compliance checklist.

Findings have only been provided in relation to the compliance requirements reviewed by the OIC.

For a summary about what areas the OIC did and did not review, and the areas where the Police Force is or is not meeting its compliance obligations, please see the compliance checklist at **attachment 1** to this report.

6.1 Open access information

Section 6 of the GIPA Act requires agencies to make their open access information publicly available free of charge.

6 Mandatory proactive release of certain government information

- (1) An agency must make the government information that is its **open access information** publicly available unless there is an overriding public interest against disclosure of the information.

Note. Part 3 lists the information that is open access information.

- (2) Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.
- (3) At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.
- (4) An agency must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.
- (5) An agency must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.

6.1.1 Policy documents

Section 18 of the GIPA Act provides that policy documents are open access information. Section 23 sets out the records that constitute an agency's policy documents.

The Police Force does not currently comply with the policy documents provisions in the GIPA Act.

The Police Force is not currently aware of all of its policy documents. An internal Police Force project is currently underway to identify relevant policy documents, review them and consider whether there are any objections to making these policy documents publicly available.

The Police Force expects this project to take at least 12 months, and that policy documents would not be available until the end of this time frame.

The OIC is deeply concerned about this breach of the GIPA Act and recommends that the Police Force take immediate action to rectify it.

Recommendation one

The Police Force identifies and makes publicly available on its website the Police Force's policy documents. In light of the resource constraints faced by the Police Force, the OIC recommends that these documents are made available on the Police Force website no later than 1 July 2011.

6.1.2 Publication guide

Section 18 of the GIPA Act provides that publication guides are open access information. Sections 20 to 22 of the GIPA Act require agencies to have a publication guide, set out the information that must be included in a publication guide and provides the process for adopting and reviewing a publication guide. Agencies must review and adopt a new publication guide at intervals of not more than 12 months.

The Police Force currently complies with the publication guide provisions in the GIPA Act.

The OIC commends the Police Force for being one of the first agencies to adopt a publication guide and provide the publication guide to the OIC. The OIC received the Police Force's finalised publication guide on 23 June 2010 and sent the Police Force a notification of compliance with section 22(1) of the GIPA Act on 1 July 2011.

The OIC does not make any recommendations in relation to the Police Force's publication guide.

6.1.3 Documents tabled in Parliament

Section 18 of the GIPA Act provides that documents tabled in Parliament are open access information.

The Police Force was not compliant with this provision of the GIPA Act.

On drawing this provision to the attention of the relevant staff member, it became clear that this obligation was not one that the person was aware of. However, following the OIC's compliance review, prompt action was undertaken by the Police Force to rectify this oversight.

The OIC notes that the Police Force has now provided links from its website to the Parliament of NSW's electronic database of documents tabled in the Legislative Assembly and the Legislative Council, which rectifies its non-compliance with the GIPA Act. As such, the OIC does not make any recommendations in relation to documents tabled in Parliament.

6.1.4 Disclosure log

Section 18 of the GIPA Act provides that disclosure logs are open access information. Sections 25 and 26 of the GIPA Act set out the requirement for a disclosure log and the information about access applications that an agency must include in its disclosure log.

The Police Force is not currently compliant with these provisions under the GIPA Act.

The Police Force's disclosure log includes the fields required by section 26 of the GIPA Act, however despite the high volume of access applications received by the Police Force there were only three entries in the disclosure log at the time of the compliance review.

The Police Force advised the OIC that access applications received in the "protocol team" – mostly consisting of applications from media and the opposition – are reviewed for possible inclusion in the disclosure log. Applications received from individuals, however, are not. Although the Police Force is not required to include in its disclosure log information about an individual's application for their own personal information, it should include information about all applications for non-personal information where:

- the Police Force decided to provide access to some or all of the information applied for and
- the information may be of interest to other members of the public.

Recommendation two

The Police Force reviews all past, current and future GIPA applications for non-personal information, whether received from media, the opposition, individuals or other applicants, to decide whether information about the application should be included in the Police Force's disclosure log.

6.1.5 Open access information not made publicly available

Section 18 of the GIPA Act provides that a record of open access information that is not made publicly available is open access information.

The Police Force is not currently compliant with this provision under the GIPA Act.

On drawing this provision to the attention of the relevant staff member, it became clear that this obligation was not one that the person was aware of. This information was not available on the Police Force's website at the time of drafting this report.

Recommendation three

The Police Force provides on its website a record of the open access information that the Police Force does not make publicly available.

6.1.6 Contracts register

Section 18 of the GIPA Act provides that an agency's register of contracts is open access information. Sections 27 to 40 of the GIPA Act set out the information that needs to be included in a contracts register.

The Police Force is currently compliant with the contracts register provisions under the GIPA Act as it has provided a link from its website to the NSW eTendering website for Police and Emergency Services.

The OIC does not make any recommendations about the Police Force's contracts register.

6.2 Proactive and informal release of information

Sections 7 and 8 of the GIPA Act enable agencies to make government information publicly available proactively or informally.

7 Authorised proactive release of government information

- (1) An agency is authorised to make any government information held by the agency publicly available unless there is an overriding public interest against disclosure of the information.
- (2) The information that an agency decides to make publicly available is to be made publicly available in any manner that the agency considers appropriate, either free of charge or at the lowest reasonable cost to the agency.
- (3) An agency must, at intervals of not more than 12 months, review its program for the release of government information under this section to identify the kinds of government information held by the agency that should in the public interest be made publicly available and that can be made publicly available without imposing unreasonable additional costs on the agency.
- (4) An agency can facilitate public access to government information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record.
- (5) The functions of an agency under this section may only be exercised by or with the authority (given either generally or in a particular case) of the principal officer of the agency.

8 Informal release of government information

- (1) An agency is authorised to release government information held by it to a person in response to an informal request by the person (that is, a request that is not an access application) unless there is an overriding public interest against disclosure of the information.
- (2) An agency can release government information in response to an informal request subject to any reasonable conditions that the agency thinks fit to impose.
- (3) An agency cannot be required to disclose government information pursuant to an informal request and cannot be required to consider an informal request for government information.
- (4) An agency can decide by what means information is to be released in response to an informal request.
- (5) An agency can facilitate public access to government information contained in a record by deleting matter from a copy of the record to be released in response to an informal request if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record.
- (6) The functions of an agency under this section may only be exercised by or with the authority (given either generally or in a particular case) of the principal officer of the agency.

6.2.1 Proactive release of information

Section 7 of the GIPA Act enables agencies to proactively release government information and requires agencies to have a program for its proactive release of information.

The OIC was advised that the Police Force does not have a program for proactively releasing government information, as is required by section 7(3) of the GIPA Act.

As such, the Police Force is not currently compliant with this provision in the GIPA Act.

Recommendation four

The Police Force delegates a person responsible for coordinating the proactive release of information, or if such a delegation is already in place, circulates the name and contact details of that person to all staff of the Police Force.

Recommendation five

The Police Force develops a program for proactively releasing government information and presents a copy of that plan to the OIC for feedback.

6.2.2 Informal release of information

Section 8 of the GIPA Act enables an agency to release government information informally. The Police Force is generally compliant with the informal release of information provisions in the GIPA Act.

However, the OIC is concerned that some informal requests for information have been returned to applicants as invalid formal access applications (ie formal access applications that did not include the \$30 application fee). This occurred in one file where the applicant requested access to policy documents, which was open access information under the GIPA Act – for further information see case study: OIC file 10-034 at **section 6.3.1** of this report.

Recommendation six

The Police Force implements a process to review whether an application without an application fee is intended to be an informal request, or whether the application is an invalid access application. As a matter of good practice, the Police Force should call the applicant to discuss whether they intended to make an informal request or a formal application and, if the application is found to be a valid access application, the Police Force could consider waiving the processing fee.

6.3 Access applications

6.3.1 Releasing information informally

Section 8 of the GIPA Act enables agencies to make government information publicly available informally.

As set out at **section 6.2.2** of this report, the Police Force is generally compliant with the provisions in the GIPA Act dealing with the informal release of information. The Police Force informed the OIC that if an access application is submitted that can be dealt with informally, the application fee may be returned and the request dealt with as an informal request for information. We were not provided with information about how often this occurs or whether the Police Force consults with the applicant when transitioning their application to an informal request. We note that the Police Force should consult with the applicant in such circumstances and inform the applicant of the different review rights attached to informal and formal applications.

All applications received at the Police Force, whether formal or informal, are initially dealt with by the same person. This person determines the validity of the application and specifies which searches, if any, are to be carried out.

During the on-site file review, the OIC reviewers sighted acknowledgements that declare applications to be invalid because a fee was not enclosed with the application. It is not clear how the Police Force determined that these applications were formal access applications and not informal applications. The OIC has also reviewed a file where the applicant requested policy documents, without enclosing a fee (see case study below). The fee was not enclosed because policy documents are open access information under the GIPA Act, however the Police Force determined that the request was an invalid access application.

Case study: OIC file 10-034

The OIC received a complaint about access to one of the Police Force's policy documents.

The complainant wrote to the Police Force requesting access to the Police Force Handbook. In his letter to the Police Force, the complainant wrote that he considered that the Handbook would be a policy document under section 23 of the GIPA Act and should therefore be available free of charge.

The Police Force responded in writing to the complainant, advising him that his application was invalid as it did not include payment of a \$30 application fee. The Police Force invited the complainant to reapply for the information by including payment of the fee along with proof of identity, and advised him that the current version of the Handbook was under review but that past copies of the Handbook were held at the NSW State Library. In further correspondence with the complainant, the Police Force stated that the Handbook was not deemed to be a policy document under the GIPA Act.

After advising the complainant that their informal request for the Handbook was an invalid access application and asking the complainant to pay a \$30 application fee, the Police Force later advised the complainant that to access the Handbook they were required to submit an informal access application – which the applicant had already done at the start of the process.

The OIC reviewed the complaint and formed the view that the Handbook is a policy document for the purposes of the GIPA Act and recommended that the Police Force facilitate access to the Handbook on its website in line with section 6 of the GIPA Act.

As the Handbook is a policy document that should be available on the Police Force's website, the complainant should not have needed to request it, and should not have been asked to lodge an access application and pay a \$30 fee to request the information.

6.3.2 Formal requirements of access applications

Section 41 of the GIPA Act sets out the formal requirements of a valid access application.

The Police Force is aware of the formal requirements of access applications, and the excluded information set out in schedule 2 of the GIPA Act that applies to the Police Force.

Applications are only received by post – applications sent in by fax or email are not accepted. The Police Force advised us that this is due to the volume of applications, and that if applications were accepted by fax or email then cheques could not be matched up with access applications. They also advised that if email was available then some applicants would email the Police Force prolifically. Although not a matter of strict compliance, the OIC recommends that the Police Force change this process to receive correspondence, informal requests and access applications by email and fax.

Currently, requests for information are only accepted at the IAU, not at any other Police Force contact point. Although not a matter of compliance with the GIPA Act and not assessed during the compliance review, the OIC takes this opportunity to recommend that the Police Force decentralise this process. The OIC recommends that all local area commands (LACs) be authorised to accept both informal and formal requests for information. The LAC may be able to respond to an informal request for information directly. If not, the LAC should forward the informal request, and all formal access applications, to the IAU for processing. The OIC also recommends that the Police Force's access application process is developed so that payment of an application fee, advance deposit or other processing charge can be made at any LAC.

Recommendation seven

The Police Force accepts informal requests for information by fax, email or post.

Recommendation eight

The Police Force provides information on its website about what type of correspondence will be accepted by email or fax and what type must be sent by post.

Recommendation nine

The Police Force decentralises the application process so that informal requests and access applications can be submitted to any local area command (LAC) and payment made at a LAC, and the LAC advises the IAU when an application or payment is made.

6.3.3 Deciding if an access application is valid

Section 41 of the GIPA Act sets out the formal requirements of a valid access application, and section 51 requires agencies to acknowledge receipt of an application and make an initial decision about whether it is a valid access application within 5 working days.

The Police Force assesses applications promptly and, within five working days, notifies the applicant of whether or not the application is considered valid, in compliance with section 51 of the GIPA Act. The OIC is concerned, however, that the Police Force does not apply the correct test when determining the validity of access applications. Further, the Police Force did not demonstrate that it had processes in place to provide advice and assistance to applicants who make invalid applications in order to assist the applicant make a valid access application.

Case study: Police Force file 102158

This file was reviewed as part of the on-site file review of randomly selected files conducted on 21 October 2010. It contained access applications that had been categorised by the Police Force as invalid. Examples include:

- an application requesting information about an incident for which the applicant provided the Computerised Operational Policing System (COPS) event number. The Police Force determined that the application was invalid and directed the applicant to direct their enquiry to the Insurance Service Unit. It was not clear why the application was found to be invalid. Another, similar, application requesting an incident report for a motor vehicle accident was determined to be invalid because the information was available for purchase. This is not a factor for consideration in determining whether an access application is valid under the GIPA Act. An agency may, however, refuse to provide access to information if that information is contained in a document that is usually available for purchase. The OIC's comments about the Police Force's practices in relation to refusing access to information for this reason are set out at **section 6.3.8** of this report.
- an application was returned as the \$30 application fee had not been sent to the Police Force. Although the Police Force had previously received the access application form and identification, the applicant was asked to resend their application form and a certified copy of their identification along with the \$30 fee. The applicant was not provided the option of being assigned a reference number to quote when sending in the \$30 fee, which would have relieved the applicant of the task of resending their form and identification. The file contained no evidence of the Police Force considering whether it could deal with the application as an informal request for information or any file note of a telephone call with the applicant to assist them to submit a valid application.
- an application from an insurance company was returned as an invalid application as the application did not include a certified copy of identification. The Police Force asked that the resubmitted access application be provided on company letterhead. Neither of these are relevant considerations when determining whether an access application is valid.

The focus of the Police Force appeared to be on expediently processing informal requests for information and access applications to the extent that this focus detracted from the Police Force's obligation to assist applicants to exercise their right to access government information.

Recommendation ten

The Police Force implements a process to ensure that access applications are reviewed for validity based solely on the relevant provisions in the GIPA Act.

Recommendation eleven

The Police Force assists applicants who make invalid applications to make valid access applications, including by communicating with such applicants by telephone or email as appropriate.

6.3.4 Searching for information

Section 53(2) of the GIPA Act requires agencies to undertake such reasonable searches as may be necessary to find 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.

The OIC understands that the Police Force's process for searching for information is as follows:

- If the applicant has requested information about an event, the computerised operational policing system (COPS) is searched to ascertain the location of the documents and other relevant details. A standard form search request is then sent to the relevant LAC. If a previous application has been made but the LAC did not return all the required documents, this is noted on the email when the search request is sent out. LACs are also asked to advise the IAU if a subpoena has been issued for the same information.
- The LAC is given 10 days to return the relevant records. The IAU is often required to chase up records and primarily do this through email and telephone conversations.
- Information contained in records that predate 1994 are archived. COPS shows a microfilm number of whether these records are held. These records are requested through Criminal Records rather than a LAC.
- When information is received at the IAU, it is reviewed by a Review Officer and may be reviewed by the Coordinator of the IAU. The Coordinator may request further documents if required.
- The OIC was advised that staff of the IAU conducting searches for information face some reluctance from others in the Police Force in relation to providing the information. This has been demonstrated by delays in sending information to the Police Force, by police officers calling the IAU to say that they are not happy that the information may be released, or by LACs sending information to the IAU with redactions. There are also difficulties if police officers who hold documents or are aware of the information move to a different LAC.
- The IAU asks for written submissions to be provided by LACs if they object to information being released.

The OIC's observations of this process are that although searches are conducted quickly by the IAU, the response rate from the LACs is inadequate. This is of concern as the IAU requires the assistance of the entire agency to perform their work in compliance with the GIPA Act.

Observation one

The Police Force could improve its processes around searching for information by requiring all Police Force staff to cooperate fully and efficiently with search requests issued by the IAU. In particular, the response rate of LACs could be monitored and if the LAC does not respond satisfactorily this could be recorded and reported to the relevant supervisor for their action.

Observation two

The Police Force would benefit from implementing a process to ensure that records held by a LAC can be obtained and returned to the IAU by any member of the LAC. Records should be accessible by all members of the LAC rather than attached to individual officers.

6.3.5 Consultations

Section 54 of the GIPA Act sets out when an agency is required to consult with a third party before deciding whether to provide access to information.

54 Consultation on public interest considerations

- (1) An agency must take such steps (if any) as are reasonably practicable to consult with a person before providing access to information relating to the person in response to an access application if it appears that:
 - (a) the information is of a kind that requires consultation under this section, and
 - (b) the person may reasonably be expected to have concerns about the disclosure of the information, and
 - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (2) Information relating to a person is of a kind that requires consultation under this section if the information:
 - (a) includes personal information about the person, or
 - (b) concerns the person's business, commercial, professional or financial interests, or
 - (c) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the person, or
 - (d) concerns the affairs of a government of the Commonwealth or another State (and the person is that government).

Note. The requirement to consult extends to consultation with other agencies and other governments. See the definition of **person** in Schedule 4.
- (3) If consultation is required concerning the release of personal information about a deceased person, that consultation is to be done by consultation with a close relative of the deceased.
- (4) The purpose of consultation under this section is to ascertain whether the person has an objection to disclosure of some or all of the information and the reasons for any such objection.
- (5) The agency must take any objection to disclosure of information that the agency receives in the course of consultation into account in the course of determining whether there is an overriding public interest against disclosure of government information.
- (6) If consultation establishes that a person objects to the disclosure of information but the agency decides to provide access to the information in response to the application, access is not to be provided until the agency has first given the objector notice of the agency's decision to provide access to the information and notice of the objector's right to have that decision reviewed, and is not to be provided while review rights on the decision are pending.
- (7) Review rights on a decision are pending while the objector is entitled to apply for a review of the decision under Part 5 (ignoring any period that may be available by way of extension of time to apply for review), or any review duly applied for is pending.

The Police Force does not comply with the consultation requirements under the GIPA Act.

In discussions with the Police Force, the OIC was advised that the Police Force takes the view that section 54 left the decision of whether or not to consult with a third party at the agency's discretion, and that the agency was only required to consult when they chose to do so. The Police Force took the view that they could choose not to consult and thereby choose not to release the information. The staff member who provided this advice to the OIC referred to the high volume of work that the Police Force faces, the limited resources available to them – particularly staff resources – and the sensitivity of the information that may be asked for as reasons why third party consultations are not practicably

reasonable. The Police Force does consult with other government agencies and with the media and State Opposition.

The review officers from the Police Force who were interviewed by the OIC reviewers during the compliance review were asked about their approach to consulting with third parties. These staff told the OIC that they simply do not consult with individuals as they do not have the capacity to. Instead as a default position they refuse access to third party information.

The OIC is concerned by the poor understanding of the requirement to consult with third parties. This was demonstrated by a question from an IAU staff member about whether personal opinions constituted personal information, and comments from the IAU that personal information does not have to be disclosed because it is 'exempt'.

The OIC is very concerned by the lack of compliance with the requirement under the GIPA Act to consult with third parties. I note that the Police Force has failed to consult even where the contact details of the third party are recorded on the information being requested and, at least once to our knowledge, when the third party was a member of the Police Force.

In each of these matters the Police Force has notified the applicant that they have not consulted by inserting the following phrase into their decision record:

Whilst the Act requires consultation with other parties concerned in this matter, it is my opinion that when considering the nature of the information and the circumstances upon which it came into existence the expectation of the New South Wales Police Force to engage in consultation process is not practicably reasonable.

The OIC recognises the limited resources available to the Police Force, however it is not acceptable for the Police Force to decline to consult with third parties in the way prescribed by section 54 of the GIPA Act.

Recommendation twelve

The Police Force requires staff to comply with section 54 of the GIPA Act. The OIC recognises that there will be times when it is unreasonable for the Police Force to consult with third parties, however this is not the default position provided for in the GIPA Act. The OIC recommends that the Police Force develop internal guidelines about when it will and will not consult and provide these guidelines to the OIC for feedback. Once finalised, the OIC recommends that these guidelines be incorporated into the compliance resource referred to at **section 5.5** of this report.

6.3.6 Time frames

Part 4 of the GIPA Act sets out the time frames that agencies must follow when deciding access applications.

The Police Force is compliant with the time frames set out in the GIPA Act. At the time of conducting the compliance review, the Police Force advised the OIC that they had not had any deemed refusals. All files reviewed by the OIC as part of the compliance review were compliant with the time frame provisions in the GIPA Act.

The OIC does not make any recommendations in relation to time frames.

6.3.7 Deciding access applications

Part 4, division 4 of the GIPA Act sets out the decisions that agencies can make when deciding access applications.

The Police Force decides access applications by making the decisions provided for in the GIPA Act. However, the decisions are not made in accordance with the GIPA Act because the Police Force fails to properly apply the public interest test. The OIC's findings and recommendations in this regard are set out at **section 6.5** of this report.

6.3.8 Refusing access

Sections 59 to 61 of the GIPA Act set out the decisions that agencies can make when refusing access to information. An agency can:

- decide that information is already available to the applicant;
- decide to refuse to deal with an access application in certain situations; or
- deal with an access application but refuse to provide access to the information requested.

The OIC's findings and recommendations about the Police Force's compliance with these provisions are set out in the sections which follow.

6.3.8.1 Information already available to the applicant

Sections 59(1)(c) and 59(2) of the GIPA Act provide that an agency is not required to provide access to information that is already available to an applicant. An agency can decide that information is already available to an applicant only if the information is contained in a document that is usually available for purchase.

The OIC is concerned about the manner in which the Police Force applies these provisions of the GIPA Act when making determinations about incident reports.

The Police Force advised the OIC that processing a request for an incident report is simple and is "just a matter of printing something off a screen." The Police Force processes access applications that seek information including but not limited to an incident report – for example seeking an incident report and a copy of a notebook entry – but not applications that only request access to the incident report. In this situation, the cost is the \$30 application fee plus any applicable processing charges.

If an applicant only asks for an incident report, the Insurance Services Unit, for a fee of \$74, processes the request.

In the case study of Police Force file 102158, referred to at **section 6.3.3** of this report, the Police Force returned a request for an incident report to the applicant as an invalid application. The Police Force has indicated that this practice is followed so the applicant is entitled to a refund of the \$30 application fee. However, if the Police Force seeks to refund an application fee, or to waive, reduce or refund any other fee or charge payable or paid under the GIPA Act, it is entitled to do so under section 127 of the GIPA Act. There is no need to return a valid access application as an invalid application.

The OIC acknowledges that the Police Force's practice in relation to incident reports is strictly compliant with sections 59(1)(c) and 59(2) of the GIPA Act. However, the OIC is concerned that this practice disadvantages applicants, as the fee imposed by the Insurance Services Unit is approximately two and a half times greater than the GIPA access application fee.

In the course of the compliance review, the OIC was advised that this issue was raised a number of times by the NSW Ombudsman in relation to FOI requests and that despite reports by the NSW Ombudsman that echo the OIC's concerns the Police Force has declined to change its practices.

One object of the GIPA Act is to promote the disclosure of government information, subject only to the public interest test. In our view, although strictly compliant with the provisions of the GIPA Act, the Police Force's practice in relation to requests for incident reports is inconsistent with this object of the GIPA Act and should be changed.

Recommendation thirteen

The Police Force accepts and processes informal requests and access applications for incident reports as GIPA Act applications. In the alternative, the cost of processing a request for an incident report by the Insurance Services Unit is reduced to no more than \$30, to reflect the application fee payable by an applicant who submits an access application.

6.3.8.2 Decisions to refuse to provide access to information

Section 58 of the GIPA Act sets out the decisions that an agency can make when deciding an access application. These include the decision to refuse to provide access to requested information because there is an overriding public interest against disclosure of the information.

Section 61 of the GIPA Act provides the requirements for an agency's notice to an applicant that it has refused to provide access to information. The notice must include:

- the agency's reasons for its decision;
- the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based; and
- the general nature and format of the records held by the agency that contain the information concerned.

The Police Force's decision records viewed by the OIC did not comply with section 61 of the GIPA Act. The decisions do not provide sufficient reasons or the findings on material questions of fact underlying those reasons. In particular, the decisions we viewed rarely included information on the public interest considerations in favour of disclosure taken into account by the Police Force when applying the public interest test. Similarly, the reasons why the public interest considerations against disclosure *outweighed* those in favour of disclosure were not provided. The OIC has provided further comments and recommendations in relation to the public interest test at **section 6.5** of this report.

Recommendation fourteen

The Police Force provides the reasons for its decisions and findings on any material questions of fact underlying those reasons in its decision records when it refuses to provide access to information.

6.3.9 Transferring access applications

Sections 44 to 48 of the GIPA Act set out the process for agency-initiated transfers and applicant-initiated transfers of access applications.

The Police Force reported to the OIC that if the Police Force receives an application that relates more closely to the functions of another agency, the Police Force transfers that application. The OIC commends the Police Force for refunding the applicant's access application fee if the Police Force transfers their application to another agency. However, the Police Force does not ask the other agency if it holds the information applied for nor does it obtain the consent of the other agency. As such, the Police Force is not compliant with section 45(1) of the GIPA Act.

Recommendation fifteen

The Police Force implements processes to ensure that staff always obtain the consent of the other agency before transferring an access application.

6.4 Internal reviews

Sections 82 to 84 of the GIPA Act set out the process for conducting an internal review.

82 Right of internal review

- (1) A person aggrieved by a reviewable decision of an agency is entitled to a review of the decision by the agency that made the decision (which is referred to in this Part as an **internal review**).
- (2) Internal review of a decision is not available if the decision is made by the principal officer of the agency or if the agency is a Minister.
- (3) An internal review can be limited to a particular aspect of a reviewable decision (such as by being limited to particular information to which the decision relates).
- (4) There is to be no internal review of a decision that is or has been the subject of review by the Information Commissioner under this Part except internal review conducted on the recommendation of the Information Commissioner.
- (5) There is to be no internal review of a decision that is or has been the subject of review by the ADT under this Part.

6.4.1 Reviewable decisions

Section 80 of the GIPA Act sets out the decisions made about an access application that are reviewable decisions.

Files viewed by the OIC indicated that the Police Force is aware that the section 80 decisions that it makes in respect of an access application are reviewable decisions, and is aware that the applicant is entitled to request an internal review of a reviewable decision.

The OIC does not make any recommendations in relation to this provision of the GIPA Act.

6.4.2 Time limits

Section 86 of the GIPA Act provides that an agency must make its decision on an internal review and give the applicant notice of their decision within 15 working days, subject to certain extensions of time.

Files viewed by the OIC indicated that the Police Force is compliant with this provision of the GIPA Act.

The OIC does not make any recommendations in relation to time limits for internal reviews.

6.4.3 Fees and charges

Sections 85 and 87 of the GIPA Act provide that a fee of \$40 is payable by an applicant for an internal review, unless it is an internal review of a deemed refusal, and that an agency is not entitled to impose any processing charges for work done in connection with an internal review.

Files viewed by the OIC indicated that the Police Force is compliant with these provisions of the GIPA Act.

The OIC does not make any recommendations in relation to fees and charges for internal reviews.

6.5 Public interest considerations

Sections 12 to 15 of the GIPA Act set out the public interest test that agencies must apply when deciding whether to disclose information

- as open access information
- proactively
- informally or
- in response to an access application.

12 Public interest considerations in favour of disclosure

- (1) There is a general public interest in favour of the disclosure of government information.
- (2) Nothing in this Act limits any other public interest considerations in favour of the disclosure of government information that may be taken into account for the purpose of determining whether there is an overriding public interest against disclosure of government information.

Note. The following are examples of public interest considerations in favour of disclosure of information:

- (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- (b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
- (c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
- (d) The information is personal information of the person to whom it is to be disclosed.
- (e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

... ..

13 Public interest test

There is an **overriding public interest against disclosure** of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

14 Public interest considerations against disclosure

- (1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.
- (2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.

6.5.1 Public interest test

Section 13 of the GIPA Act sets out the public interest test that agencies must apply when making a decision about whether to provide access to information that is not excluded information.

The Police Force is not correctly applying the public interest test when deciding access applications.

It was apparent to the OIC that Police Force staff do not share a consistent understanding of the public interest test. At times, the considerations against disclosure listed in section 14 of the GIPA Act are applied by the Police Force as categories of exempt information.

In interviews with staff from the Police Force, the OIC asked how the public interest test is applied to access applications. The responses described the following process:

- the review officer reviews the requested information to see if the applicant was involved in the event
- if not, they will not release any information to the applicant.
- if yes, the officer considers what information the applicant will receive. To do this, the officer looks at where the event is up to and works through the documents. (One review officer noted that they have worked in the Police Force for a number of years and knows from experience with the FOI Act what information will be redacted. There was no reference made to differences between the FOI Act and the GIPA Act or the concept that information may be able to be released under the GIPA Act that may not have been released under the FOI Act).
- The review officer reads through the documents and applies “the exemptions in section 14, which mirror the FOI exemptions” working from a worst case scenario basis (what is the worst thing that could happen if the information is released).
- if the review officer finds information that is the personal information of a third party or would fall under one of the other provisions in the table in section 14 of the GIPA Act then that information is immediately redacted. If it is a third party’s information it is redacted without consulting the third party.
- there are some categories of information that are never disclosed. For example, the Police Force has a blanket rule that witness statements do not go out.
- once the information has been reviewed, the decision is drafted based on templates and the file then goes to the Coordinator for final approval.
- when asked what public interest considerations in favour of disclosure tend to come up, a review officer stated that, if any, only section 12(d) of the GIPA Act would apply (ie that the information is personal information of the person to whom it is to be disclosed).

The Police Force is not correctly applying the public interest test as set out in sections 12 to 15 of the GIPA Act. Rather, an exemption approach that mirrors the process under the repealed FOI Act is applied. Of particular concern was advice from review officers to the OIC reviewers that their experience under the FOI regime equipped them to decide access applications. These statements were accompanied by references to “exemptions” available under the FOI Act – without due reference to the GIPA Act’s public interest test.

Interviews also revealed a tendency to consider ‘categories’ of information and to disclose or redact information based on which category it fell into (eg witness statements, third party information, etc) without considering the facts and circumstances of particular applicants or applying the public interest test.

The Police Force provided the OIC with a CD of determination templates used by the Police Force. This comprehensive set of templates is a valuable resource for the Police Force that can assist the it to process and decide access applications efficiently. However, the public interest test set out in the GIPA Act requires the Police Force to turn its mind to the public considerations for and against disclosure of information in every access application. This requires a case-by-case approach to forming decisions and may require staff of the Police Force to amend or add to the relevant template every time they draft a decision to reflect the reasons for their decisions.

Recommendation sixteen

The Police Force implements processes to ensure that the public interest test is correctly applied when deciding whether to release information. This requires the Police Force to identify the public interest factors in favour of disclosing information and the public interest factors against disclosure, and to balance these factors to decide whether there is an overriding public interest against disclosure. All staff should immediately stop referring to the FOI Act and its exemption model and consider the public interest test in light of the facts and circumstances of each application.

6.6 Notices

Section 126 of the GIPA Act sets out the requirements for notices given by agencies in connection with their functions under the GIPA Act.

126 Requirements for notices given by agencies

- (1) The following requirements apply to any notice or notification that an agency is required to give under this Act:
 - (a) it must be in writing,
 - (b) it must include the date of the decision or other action of the agency with which the notice or notification is concerned,
 - (c) it must include a statement that gives details of any right of review provided by this Act in respect of any decision of the agency with which the notice or notification is concerned (including details of the period within which any such right of review must be exercised),
 - (d) it must include the contact details of an officer of the agency to whom inquiries can be directed in connection with the decision or other action of the agency with which the notice or notification is concerned,
 - (e) it must not disclose any information for which there is an overriding public interest against disclosure.
- (2) A notice or notification under this Act that is given by an agency to a person by being posted to the person at the postal address provided by the person for correspondence in connection with the matter concerned is considered to have been given to the person when it is posted by the agency.

6.6.1 Form of notices

Section 126 of the GIPA Act sets out the requirements for notices given by agencies in connection with their functions under the GIPA Act.

GIPA files viewed by the OIC indicate that the Police Force complies with the requirements for the form notices as set out in the GIPA Act.

The OIC does not make any recommendations in relation to the requirements for notices give by the Police Force.

6.7 Excluded information

Schedules 1 and 2 of the GIPA Act set out the categories of information for which there is a conclusive presumption of an overriding public interest against disclosure and the categories of information that are excluded information.

14 Public interest considerations against disclosure

- (1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.

... ..

43 Access application cannot be made for excluded information

- (1) An access application cannot be made to an agency for access to excluded information of the agency.

Note. Information is excluded information of an agency if it relates to any function specified in Schedule 2 in relation to the agency.

- (2) An application for government information is not a valid access application to the extent that the application is made in contravention of this section.

6.7.1 Excluded information

Schedule 2 of the GIPA Act sets out categories of information that are excluded information.

The Police Force does not hold any excluded information.

In at least one file viewed by the OIC (see the case study of Police Force file 101837 below) the Police Force decided that an access application was invalid because it requested information held by another agency that the Police Force considered to be exempt information. In such circumstances the Police Force ought to transfer the access application to the other agency so that agency can make the decision.

Case study: Police Force file 101837

This file contained an access application for information held by the NSW Ombudsman.

The Police Force wrote to the applicant advising them that the requested information was schedule 2 information. There was no record on the file that indicated the request was transferred to the NSW Ombudsman or that the application had been discussed with the NSW Ombudsman.

It appeared from the file that the applicant had requested the information from the Police Force following advice from Penrith LAC that the applicant was entitled “under the Freedom of Information Act 1989” to “request access to any documents held by the Police Force relating to this relevant proceeding.”

7. Further comments

7.1 Caseload

The Police Force deals with a very high volume of requests for information under the GIPA Act. On the date the OIC reviewers attended the IAU there were approximately 450 open access applications being dealt with by the IAU. There were also 11 Freedom of Information matters that were yet to be finalised.

In conducting this compliance review and compiling this report the OIC was mindful of the high caseload and limited human resources at the Police Force. The OIC recommends that the Police Force provide additional resources to the IAU to assist the Police Force to process all applications in compliance with the GIPA Act.

Observation three

The Police Force should recruit additional staff to resource the IAU to assist the IAU to process all applications in compliance with the GIPA Act.

7.2 Police Force structure

At the time of conducting this compliance review there were 17 staff in the IAU.

The Manager of the IAU is a Senior Officer. The Acting Coordinator is a clerk grade 7.

The rest of the staff are review officers (clerks grade 5/6), administrative officers (clerk grade 3/4), assistant review officers (clerk grade 1/2) and reception (clerk grade 1):

- reception is responsible for mail, switchboard management and some administrative tasks including filing and scanning documents.
- assistant review officers perform administrative functions including data entry, filing, scanning and preparing basic notices of determination.
- administrative officer processes notices of determinations and requests for advance deposits and extensions.
- review officers process more difficult applications and prepare notices of determination. Protocol applications and some internal review matters are dealt with by review officers.

There are three teams within the IAU: Team 1, Team 2 and Team 3.

Team 1 is responsible for receiving access applications, determining the validity of access applications and carrying out searches.

Team 2 is responsible for reviewing information and determining access applications. These determinations are signed off by the coordinator of the IAU.

Team 3 is responsible for 'protocol applications' - being access applications received from media and politicians.

7.3 Resources available to the Police Force

The Police Force does not have any dedicated GIPA resources for its staff to use when determining access applications, other than the OIC website.

The OIC was advised that the Police Force uses the FOI Manual produced by the NSW Ombudsman and Department of Premier and Cabinet as a GIPA resource. This is of significant concern, as the FOI Manual contains information relevant to the repealed *Freedom of Information Act* and predates the GIPA Act.

The OIC was informed that IAU staff informally discuss applications to 'bounce ideas off each other' and that the unit used to have regular staff meetings. However the IAU has not had a formal staff meeting for several months because of the high workload.

Recommendation seventeen

The Police Force immediately ceases using the FOI Manual when dealing with access applications under the GIPA Act.

Observation four

The Police Force is encouraged to develop an in-house resource for all relevant Police Force staff to use when dealing with access applications under the GIPA Act. This resource should be based on the GIPA Act, may build off the information on the OIC's website, and could be reviewed by the OIC before being distributed to Police Force staff.

Observation five

The Police Force would benefit from regular staff meetings between IAU staff, at least on a monthly basis, to discuss access applications, the application of the public interest test, feedback and assistance from the OIC and other relevant discussion points.

8. Glossary

Acronym or word	Explanation
COPS	Computerised Operational Policing System
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1989</i>
GIPA Act	<i>Government Information (Public Access) Act 2009</i>
IAU	NSW Police Force Information Access Unit
LAC	Local Area Command
Police Force	NSW Police Force
OIC	Office of the Information Commissioner

9. Summary of attachments

1. Completed OIC checklist, incorporating the OIC's feedback for the Police Force 36 pages
2. Correspondence from the OIC to the Police Force dated 3 November 2010, returning files for the Police Force's reconsideration 4 pages
3. Response from Police Force to the OIC's provisional compliance report together with the OIC's comments on this response 13 pages



office of the
information
commissioner
new south wales

Attachment 1

Government Information (Public Access) Act 2009 (NSW)

Compliance checklist for agencies

promoting open government

Level 11, 1 Castlereagh Street, Sydney NSW 2000 • GPO Box 7011, Sydney NSW 2001
t 1800 INFOCOM (1800 463 626) • f 02 8114 3756 • e oiinfo@oic.nsw.gov.au

www.oic.nsw.gov.au

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Introduction

This document sets out the requirements that agencies must comply with under the *Government Information (Public Access) Act 2009* (the GIPA Act), and the circumstances in which those requirements apply. **It is not a replacement for reading and understanding the Act itself.** If you are unclear about how the GIPA Act will relate to your agency, call the Office of the Information Commissioner (OIC) for information. You may also want to consider getting independent legal advice.

The GIPA Act focuses on information sharing and a cultural change to a proactive approach to release of government information. To comply with the GIPA Act, you will need to consider how your agency approaches access to information. For example:

- **Commitment** – establish written policies and procedures that support your agency's right to information process, plus training for staff so they understand the process and can access and implement it easily.
- **Communication** – provide information for staff about the requirements of the GIPA Act, and communicating support for an approach that facilitates and encourages simple and straightforward access to government information.
- **Responsiveness** – deal with requests for information by responding quickly. Administrative burdens can be eased by releasing information informally rather than requiring a formal access application. Consistent with a good customer service focus, applicants should always be kept informed of where their application or request is up to.
- **Initiative** – the GIPA Act authorises the proactive release of information unless it is excluded information or there is an overriding public interest against disclosure. The Act thus provides an opportunity for your agency to proactively release information that will assist or inform the public about what your agency does and how it does it.

For guidance on how to comply with the GIPA Act, please see the OIC's Compliance Overview, which you can download from the OIC's website at www.oic.nsw.gov.au.

Using the checklist as a self-assessment tool

This checklist can be used to assess your agency's compliance with the GIPA Act. You can choose to use the compliance codes below.

SELF-ASSESSMENT RATING	COMPLIANCE CODE
Not Applicable	NA
Not Compliant	NC
Compliant	C
Compliant Plus	C+

On completion, this checklist can be used to develop an action plan to ensure compliance with the requirements and objectives of the GIPA Act.

Exercising discretions

The GIPA Act confers both obligations and discretionary powers on agencies. In this checklist mandatory requirements are identified by the letter 'M', discretionary requirements by the letter 'D'. Discretionary powers are also referred to throughout the checklist by the words: '*Applies its discretion to...*'

Discretionary powers should be applied in accordance with the objectives of the GIPA Act.

Section 3(2) of the GIPA Act:

It is the intention of Parliament:

- (a) *that this Act be interpreted and applied so as to further the object of this Act, and*
- (b) *that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.*

Questions?

If you have any questions about how to use this resource or about how the GIPA Act applies to your agency, please contact us. Our details are below:

The Office of the Information Commissioner

Level 11, 1 Castlereagh Street, Sydney
9am to 5pm Monday to Friday
(excluding public holidays)
Website: www.oic.nsw.gov.au

GPO Box 7011, Sydney NSW 2001
1800 INFOCOM (1800 463 626)
Email: ocinfo@oic.nsw.gov.au

You can call us through the National Relay Service (for deaf people or people with a speech or hearing impairment on 133 677 or through the Translating and Interpreting Service (TIS) on 131 450.

1. Open access information

What is open access?							
1.1	Requirement			NA	NC	C	C+
	➤ Open access information is publicly available						
	○ Free of charge.	M			NC		
	○ On the agency's website and, at the agency's discretion, also available in other ways (eg hard copy, mail out, etc). <i>Note: open access information must be made publicly available on the agency's website unless this would impose unreasonable additional costs on the agency.</i>	M					
	○ If relevant, the agency deletes matter that, if included, would result in an overriding public interest against disclosure.	M					

Policy documents							
1.2	Requirement			NA	NC	C	C+
1.2.1	○ The agency has identified its policy documents, which are open access information. <i>Policy documents are documents which are used by the agency in connection with the exercise of its functions that affect/are likely to affect the rights, privileges or other benefits; or obligations, penalties or other detriments to which members of the public are/may become entitled, eligible, liable or subject.</i> <i>See section 23 of the GIPA Act.</i>				NC		
1.2.2	➤ No prejudice if policy documents are not available						
	○ No one is subject to prejudice because of any provisions of the agency's policy document if, at the relevant time: <ul style="list-style-type: none"> the policy document is not publicly available as required by the GIPA Act the person is not aware of those provisions the person could lawfully have avoided the prejudice had the person been aware of those provisions. <i>Note: This does not apply to any part of a policy document that is required by the GIPA Act to be deleted.</i>	M			Not reviewed, as policy documents were not identified.		

Publication guides			NA	NC	C	C+
1.3	Requirement					
	<ul style="list-style-type: none"> ○ The agency has an up-to-date, publicly available publication guide. <i>Suggestion: ensure the agency has a staff member responsible for maintaining its publication guide</i> 	M				C+
1.3.1	➤ Content of the publication guide					
	<ul style="list-style-type: none"> ○ Describes: <ul style="list-style-type: none"> • the agency's structure • the agency's functions • how the functions (including the decision-making functions) of the agency affect members of the public. 	M				C
	<ul style="list-style-type: none"> ○ Identifies: <ul style="list-style-type: none"> • the various kinds of government information held by the agency • the kinds of government information the agency holds that it makes publicly available • the kinds of information that are publicly available for free • the kinds of information that are publicly available for a charge. 	M				C
	<ul style="list-style-type: none"> ○ Specifies: <ul style="list-style-type: none"> • any arrangements that exist to enable the public to participate in forming the agency's policies • arrangements that enable the public to participate in the exercise of the agency's functions • how the agency makes government information publicly available. 	M				C
1.3.2	➤ Adopting and reviewing the publication guide					
	<ul style="list-style-type: none"> ○ The publication guide was (or will be) adopted before 1 January 2011. 	M				C+
	<ul style="list-style-type: none"> ○ The agency notified and, if requested, consulted with the Information Commissioner before adopting its publication guide. 	M				C+
	<ul style="list-style-type: none"> ○ The agency reviews its publication guide and adopts a new publication guide at least once every 12 months. <i>Suggestion: have a mechanism in place to ensure the publication guide is reviewed and updated at least once every 12 months</i> 	M				NA

Open access information

Information in documents tabled in Parliament						
1.4	Requirement		NA	NC	C	C+
	<ul style="list-style-type: none"> ○ Information about the agency in any document that has been tabled in Parliament by or on behalf of the agency (other than documents tabled by order of either House of Parliament) is publicly available. 				C	

Disclosure log of access applications						
1.5	Requirement		NA	NC	C	C+
1.5.1	<ul style="list-style-type: none"> ○ The agency has an up to date disclosure log. <p><i>Note: Information about an application for personal information by an applicant (who is an individual) is not required to be included in the disclosure log</i></p>	M			NC	
1.5.2	<p>➤ Content of the disclosure log</p> <ul style="list-style-type: none"> ○ The disclosure log contains: <ul style="list-style-type: none"> • dates applications are decided • a description of the information provided • a statement about whether any of the information is now available from the agency to other members of the public and, if so, how such information can be accessed. <p><i>Note: there is a template disclosure log on the OIC's website</i></p>	M			C	

Open access information not made publicly available because of an overriding public interest against disclosure						
1.6	Requirement		NA	NC	C	C+
	<p>➤ Record of information that is not publicly available</p> <ul style="list-style-type: none"> ○ The agency has a record of open access information that is not made publicly available because of an overriding public interest against disclosure. 	M			NC	
	<ul style="list-style-type: none"> ○ The record indicates the general nature of this information. 	M				

Government contracts register – class 1 contracts				
1.7	Requirement			NA NC C C+
<p><i>Requirements for class 1 contracts only apply if the agency enters into class 1 contracts. A class 1 contract is a contract to which the agency is a party that has (or is likely to have) a value of \$150,000 or more.</i></p>				
	<p>➤ Information in the contracts register</p>			
	<p>○ Information about class 1 contracts is entered in the register within 60 days of the contract becoming effective.</p> <p><i>Note: a contract becomes effective when it is entered into by or on behalf of the agency, or when all conditions precedent are satisfied</i></p>	M		C
	<p>○ The government contracts register contains all the required information (as applicable) for each class 1 contract.</p> <ul style="list-style-type: none"> • name and business address of the contractor • particulars of any related body of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in the contractor's obligations or receive a benefit • date when the contract became effective • the duration of the contract • particulars of the project, goods or services or the real property • estimated amount payable to the contractor • description of any provisions under which the amount payable to the contractor may be varied • description of any provisions about renegotiating the contract • if there was a tendering process, the method of tendering and a summary of the criteria against which tenders were assessed • description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services. <p><i>Note: this information is outlined in section 29 of the GIPA Act.</i></p>	M		

Government contracts register – class 2 contracts				NA	NC	C	C+
1.8	Requirement						
<p><i>Requirements for class 2 contracts only apply to class 2 and class 3 contracts. A class 2 contract is a contract to which the agency is a party that has (or is likely to have) a value of \$150,000 or more, AND one of the following applies:</i></p> <ul style="list-style-type: none"> <i>there has not been a tender process, the proposed contract has not been made publicly available and the terms and conditions of the contract have been negotiated directly with the contractor</i> <i>the proposed contract (whether or not made publicly available) has been the subject of a tendering process and the terms and conditions of the contract have been substantially negotiated with the successful tenderer</i> <i>the obligations to maintain or operate infrastructure or assets could continue for 10 years or more</i> <i>the contract involves a privately financed project as defined by guidelines published by the Treasury</i> <p><i>or</i></p> <ul style="list-style-type: none"> <i>the contract involves a transfer of a significant asset of the agency concerned to another party to the contract in exchange for the transfer of an asset to the agency.</i> 							
	<ul style="list-style-type: none"> For each class 2 contract, the government contracts register contains all the information required for a class 1 contract AND all the applicable information for a class 2 contract 		M			C	
	<ul style="list-style-type: none"> future transfers of assets to the State at no cost, including the date future transfers of significant assets to the contractor, including the date any cost-benefit analysis 	<ul style="list-style-type: none"> components and quantum of the public sector comparator (if used) if relevant, a summary of information used in the contractor's full base case financial model 	<ul style="list-style-type: none"> if relevant, particulars of how risk during the construction and operational phases is to be apportioned between the parties particulars as to significant guarantees or undertakings between the parties other key elements 				
<p><i>Note: this information is outlined in section 30(2) of the GIPA Act.</i></p>							

Government contracts register – class 3 contracts				NA	NC	C	C+
1.9	Requirement						
<ul style="list-style-type: none"> <i>Requirements for class 3 contracts only apply to class 3 contracts. A class 3 contract is a class 2 contract which has (or is likely to have) a value of \$5 million or more.</i> 							
	<ul style="list-style-type: none"> Information for class 3 contracts 						
	<ul style="list-style-type: none"> A copy of all class 3 contracts are included in the government contracts register. 		M			C	

Other requirements – for class 1, 2 and 3 contracts						
1.10	Requirement		NA	NC	C	C+
1.10.1	<p>➤ The contracts register is available</p> <ul style="list-style-type: none"> ○ Information in the government contracts register is made publicly available for 30 days, or (as applicable) until the project is complete, the goods and services concerned have been provided, the term of the lease has expired or the real property has been transferred ○ A copy of the agency’s government contracts register is published on the Government tenders website. 	M			C	
1.10.2	<p>➤ Material variations to contracts</p> <ul style="list-style-type: none"> ○ Material variations to class 1 or class 2 contracts are reflected in the contracts register within 60 days of the variation becoming effective. ○ If there is a material variation to a class 3 contract, a copy of the variation is included in the government contracts register within 60 days of the variation becoming effective. 	M			C	
1.10.3	<p>➤ Disagreements about the contracts register</p> <ul style="list-style-type: none"> ○ If a person other than an officer of the agency (eg. a party to a government contract) disagrees with the way in which the agency has interpreted its obligations relating to the contracts register, the agency obtains the opinion of the Chairperson of the State Contracts Control Board. 	M			C	

Other information prescribed by the regulations						
1.11	Requirement		NA	NC	C	C+
	<p>➤ Regulations</p> <ul style="list-style-type: none"> ○ The agency makes publicly available any other government information prescribed by the regulations as open access information <p><i>Suggestion: include your right to information officer’s contact details on the OIC mailing list so you are kept up to date if regulations prescribe new documents to be treated as open access.</i></p>	M			NA	

Proactive and informal release

2. Proactive and informal release of information

Proactive release of information						
2.1	Requirement		NA	NC	C	C+
2.1.1	➤ Principal officer's authority					
	○ Proactively releases information by or with the authority of the principal officer.	M		NC		
2.1.2	➤ Powers to release information					
	○ Applies its discretion to make information publicly available unless there is an overriding public interest against disclosure.	D				
	○ Information is made publicly available in an appropriate manner, free of charge or at the lowest reasonable cost.	M				
	○ The agency reviews its program for releasing government information at least once every 12 months. <i>Note: As part of this review, the agency must identify the kinds of government information that should, in the public interest, be publicly available and that can be made publicly available without imposing unreasonably additional costs on the agency.</i>	M		NC		
	○ Applies its discretion to facilitate public access to information by deleting matter if including the matter would otherwise result in there being an overriding public interest against disclosure.	D				

Informal release of information						
2.2	Requirement		NA	NC	C	C+
2.2.1	➤ Principal officer's authority					
	○ Releases information in response to informal applications by or with the authority of the principal officer.	M			C	
2.2.2	➤ Powers to release information					
	○ Applies its discretion to release information in response to an informal request unless there is an overriding public interest against disclosure.	D			C	
	○ Applies its discretion to release information in response to an informal request subject to reasonable conditions.	D				
	○ Applies its discretion to delete content if including it would result in an overriding public interest against disclosure.	D				

Proactive and informal release

Assistance and oversight			
2.3	Requirement		NA NC C C+
2.3.1	➤ General advice and assistance		Not reviewed
	○ Provides advice and assistance to people who request or propose to request access to information, to help them access publicly available information.	M	
2.3.2	➤ Specific advice and assistance		Not reviewed
	○ Provides advice about whether or not information is publicly available and (if it is) how it can be accessed.	M	
	○ Provides advice about how to make an access application for information that is not publicly available but may be held by the agency.	M	
	○ If the information is unlikely to be held by the agency, but appears likely to relate to the functions of some other agency, provides the contact details of the other agency.	M	
	○ Provides the contact details of the OIC and advice on the availability of information published by the OIC that may be relevant.	M	

3. Access applications

Releasing information informally			
3.1	Requirement		NA NC C C+
3.1.1	➤ Principal officer's authority		
	○ Applies its discretion to release information proactively and/or informally, rather than making everyone who seeks information submit a formal access application.	D	C

Formal requirements of access applications			
3.2	Requirement		NA NC C C+
3.2.1	➤ Formal requirements of access applications		
	<ul style="list-style-type: none"> ○ The agency understands that access applications must: <ul style="list-style-type: none"> • be in writing sent to or lodged at an office of the agency • clearly indicate that it is an access application made under the GIPA Act • be accompanied by a fee of \$30 • state a postal address in Australia as the address for correspondence in connection with the application • include the information that is reasonably necessary to enable the government information applied for to be identified. <p><i>Note: an access application may also include submissions by the applicant about any public interest considerations they think the agency should take into account, a request (and/or supporting information) for a discount on process charges or any other information they think may be relevant</i></p> <p><i>There is a template access application form on the OIC's website, www.oic.nsw.gov.au.</i></p>	M	C
3.2.2	➤ Excluded information		
	○ The agency is aware of excluded information under schedule 2 of the GIPA Act that applies to the agency.	M	Not reviewed
3.2.3	➤ Advice and assistance		
	○ Provides advice and assistance to applicants who make invalid applications to assist them to make a valid access application.	M	NC

Access applications

Deciding if an access application is valid			
3.3	Requirement		NA NC C C+
3.3.1	➤ Initial decision of validity		C
	○ Assesses applications promptly and, within five working days, notifies the applicant of whether or not the application is considered valid.	M	
	○ When acknowledging receipt of a valid application, the agency includes: <ul style="list-style-type: none"> the date when the application will be decided a statement that the application will be deemed to have been refused if not decided by the above date a statement that information about the application may be made public in the agency's disclosure log, and that the applicant may object to this details of the applicant's rights of review connected to the access application, including reviews of the decision made about the application and about any decision by the agency to include information in the disclosure log despite an applicant's objection. 	M	
3.3.2	➤ Subsequent decisions of invalidity		Not reviewed
	○ If, after notifying the applicant that the access application is valid, the agency decides the application is not valid, it provides advice and assistance to assist the applicant to make a valid access application	M	

Invalid applications			
3.4	Requirement		NA NC C C+
	➤ Responding to invalid applications		NC
	○ Provides advice and assistance to assist applicants who make invalid applications to make a valid access application.	M	
	○ When notifying an applicant that their application is invalid, the agency includes: <ul style="list-style-type: none"> a statement of the reason why the application is not valid (referring to the relevant provisions of the GIPA Act) a notification of the applicant's rights of review under the Act if the reason is non-payment, an invitation to pay the fee if the reason is failure to provide required information, an invitation to provide information. <p><i>Note: There is a template notice on the OIC's website.</i></p>	M	

Access applications

Searching for information			
3.5	Requirement		NA NC C C+
	➤ Searches for information held by the agency		C
	○ Undertakes reasonable and efficient searches for information held by the agency (as at the time the application was received).	M	
	○ If a record has been lost as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the <i>State Records Act 1998</i> or contrary to the agency's established record management procedures, the agency searches for the information in records in the electronic backup system/s.	M	
	○ Only applies its discretion to refuse to search for information if to do this search would require an unreasonable and substantial diversion of the agency's resources.	D	

Consultations			
3.6	Requirement		NA NC C C+
	➤ Consultations		NC
	○ Takes reasonably practical steps to consult with a person before providing access to information relating to that person when the requested information: <ul style="list-style-type: none"> • includes personal information about the person • concerns the person's business, commercial, professional or financial interests • concerns research that has been, is being, or is intended to be, carried out by or on behalf of the person • concerns the affairs of a government of the Commonwealth or another State (and the person is that government). 	M	
	○ If a required consultation concerns personal information about a deceased person, the agency consults with a close relative of the deceased.	M	

Objections to disclosure						
3.7	Requirement		NA	NC	C	C+
	➤ Objections to disclosure		Not reviewed			
	○ Takes into account any objection to disclosure when deciding whether there is an overriding public interest against disclosure.	M				
	○ If the agency receives an objection to disclosure of information from a consultation, but decides to provide access anyway, it gives notice to the objector of its decision and of the right to have that decision reviewed (before providing the information).	M				

Disclosure log						
3.8	Requirement		NA	NC	C	C+
	➤ If an applicant objects to inclusion in disclosure log		Not reviewed			
	○ If an applicant objects to the agency's decision to include information about its decision in its disclosure log, the agency notifies the applicant of: <ul style="list-style-type: none"> • whether the applicant was entitled to object • whether the agency will include the information in its disclosure log (if the applicant was entitled to object). 	M				
	○ If the agency decides an applicant is not entitled to object to the inclusion of information, it appropriately exercises its discretion to immediately include the information in the disclosure log	D				
	○ If the agency decides an applicant is entitled to object to the inclusion of information but decides to include the information despite the objection, it excludes the information from the log to allow the objector to apply for a review of the agency's decision.	M				

Access applications

Time frames for deciding access applications			
3.9	Requirement		NA NC C C+
	➤ Time frames		
	○ Decides access applications and gives applicants notice of the decision within 20 working days.	M	C
	○ If the agency extends the time frame (by up to 10 working days) for either or both of the following reasons: <ul style="list-style-type: none"> • consultation with another person is required • records are required to be retrieved from archive then the agency exceeds the time frame by no more than 15 working days for any particular access application	M	
	○ Applies its discretion to agree with an applicant to extend (and further extend) the decision period.	D	
	○ If the agency extends the decision period for any reason, it notifies the applicant of the extension and indicates the date on which the extended decision period will end as soon as practicable (and within 5 working days after it is extended).	M	

Deciding access applications			
3.10	Requirement		NA NC C C+
	➤ How applications are decided		
	○ Agency decides access applications by deciding: <ul style="list-style-type: none"> • to provide access to the information • that the information is not held by the agency • that the information is already available to the applicant • to refuse to provide access to the information because there is an overriding public interest against disclosure of the information • to refuse to deal with the application • to refuse to confirm or deny that information is held by the agency because there is an overriding public interest against disclosure of information confirming or denying that fact. 	M	NC because the public interest test is not properly applied
	○ Applies its discretion to make more than one decision in order to deal with various items of information applied for	D	
	○ Applies its discretion to replace or supplement its original decision/s (even if the period within which the application should be decided has expired) if it finds it holds information or additional information after an original decision	D	

Access applications

Refusing access			
3.11	Requirement		NA NC C C+
3.11.1	➤ The information is already available to applicant		C, although the OIC holds concerns about the Police Force's practices with respect to incident reports
	○ Applies its discretion to decide information is available to the applicant if it is already publicly available.	D	
	○ If so, notifies the applicant of how the information can be accessed.	M	
3.11.2	➤ Refusing to deal with application		Not reviewed
	○ Applies its discretion to refuse to deal with an access application only if: <ul style="list-style-type: none"> dealing with the application would require an unreasonable and substantial diversion of the agency's resources the agency has already decided a previous application for the same information (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the agency would make a different decision on this application the applicant has failed to pay a required advance deposit or <ul style="list-style-type: none"> the information is or has been the subject of subpoena or order of a court for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order. 	D	
	○ Applies its discretion, when deciding whether an application requires an unreasonable and substantial diversion of resources, to: <ul style="list-style-type: none"> extend the time frame for deciding the application by agreement with the applicant treat two or more applications as the one application because they are related and made by the same applicant (or by persons acting in connection with the applications). 	D	
	○ Gives applicants reasonable opportunity to amend applications before refusing to deal with an application	M	
	○ Gives reasons if it refuses to deal with an access application	M	
3.11.3	➤ Notice of decision to refuse to provide access		NC because the public interest test is not properly applied
	○ If the agency refuses to provide access to information (because of an overriding public interest against disclosure), the agency notifies the applicant of: <ul style="list-style-type: none"> the agency's reasons for decision findings on any material questions of fact underlying these reasons, together with a reference to the sources of information on which those findings are based the general nature and the format of records held by the agency that contains the information concerned. 	M	

Providing access			
3.12	Requirement		NA NC C C+
3.12.1	➤ Forms of access		Not reviewed
	<ul style="list-style-type: none"> ○ Applies its discretion to provide access to government information in response to an application by providing: <ul style="list-style-type: none"> • a reasonable opportunity to inspect a record containing the information • a copy of a record containing the information • access to a record containing the information, together with such facilities as may be necessary to enable the information to be read, viewed or listened to (as appropriate to the kind or record concerned) • a written transcript of the information in the case of information recorded in an audio record or recorded in shorthand or other encoded format. 	D	
	<ul style="list-style-type: none"> ○ Provides access to information in the way requested by the applicant, unless to do so would: <ul style="list-style-type: none"> • interfere unreasonably with the operations of the agency or result in the agency incurring unreasonable additional costs • be detrimental to the proper preservation of the record • involve an infringement of copyright, or • create an overriding public interest against disclosure of the information because of the way it would be provided. 	M	
3.12.2	➤ Access is unconditional		Not reviewed
	<ul style="list-style-type: none"> ○ Does not impose any conditions on the use or disclosure of information when providing access to information in response to an access application. 	M	
	<ul style="list-style-type: none"> ○ Applies its discretion to impose how a right of access may be exercised (but only to avoid there being an overriding public interest against disclosure). 	D	
	<ul style="list-style-type: none"> ○ Applies its discretion to impose a condition that access to medical or psychiatric information will only be provided to a medical practitioner nominated by the applicant (and not to the applicant personally). 	D	
3.12.3	➤ Deleting information from a record		Not reviewed
	<ul style="list-style-type: none"> ○ Applies its discretion to delete information from a copy of a record to which access is provided, because the deleted information is not relevant or because the agency has decided to refuse to provide access to that information because of an overriding public interest against disclosure. 	D	
3.12.4	➤ Providing access by creating new record		Not reviewed
	<ul style="list-style-type: none"> ○ Applies its discretion to provide information by making and creating a new record of that information. 	D	
3.12.5	➤ Providing information not applied for		Not reviewed
	<ul style="list-style-type: none"> ○ Applies its discretion to provide access to additional information (unless there is an overriding public interest against disclosure). 	D	

Access applications

Providing access			
3.12.6	➤	Time frame within which access rights must be exercised	
	○	Provides applicants with six months to access the information (the access period), starting from the point when notice of the decision to grant access was given to the applicant (even if access is conditional on payment of any processing charges).	M
	○	If the agency extends the access period, the agency notifies the applicant of the extension.	M
			Not reviewed

Deferring access			
3.13	Requirement		NA NC C C+
3.13.1	➤	Deferring access	
	○	Applies its discretion to defer providing access if the information is contained in a record (or a draft of or extract from a record) that: <ul style="list-style-type: none"> by or under this Act or some other legislative instrument, is required to be published but is yet to be published has been prepared for presentation to Parliament, or has been designated by the responsible Minister for the agency as appropriate for presentation to Parliament, but is yet to be presented has been prepared for submission to a particular person or body, or has been designated by the responsible Minister for the agency as appropriate for submission to a particular person or body, but is yet to be submitted. 	D
	○	Only defers access until a record has been published, presented or submitted.	M
	○	When deciding whether to defer access, the agency notifies the applicant of the decision to defer and includes the date on which access will be provided or (if that date is not known) describes the event following which access will be provided and the expected date of that event.	M
	○	The agency does not defer access to a second access application for the same information by the same applicant 12 months after the first application.	M
			Not reviewed

Subpoenas			
3.14	Requirement		NA NC C C+
3.14.1	➤	Providing information that is subject to a subpoena	
	○	Applies its discretion to not comply with a subpoena or other order of a court if the agency has provided the information to the person who requested the issue of the subpoena or applied for the order in response to an access application made by the person (unless the subpoena specifically orders the contrary).	D
			Not reviewed

Access applications

Amending access applications			
3.15	Requirement		NA NC C C+
3.15.1	➤ Amending access applications		Not reviewed
	○ If an applicant amends their access application, the agency notifies the applicant to confirm the amendment and the date on which it was amended.	M	
	○ Applies its discretion when imposing a processing charge to any aspect of the application that an amendment makes unnecessary before the applicant amended (reduced) the scope of the application.	D	
	○ Decides applications within the required time (despite any amendment made by the applicant).	M	
	○ Applies its discretion to refund or reduce any application fee or advance deposit already paid when applicants amend their applications.	D	

Withdrawing access applications			
3.16	Requirement		NA NC C C+
3.16.1	➤ Withdrawing access applications		Not reviewed
	○ Applies its discretion to refund any application fee or advance deposit if applicants withdraw their applications.	D	
	○ Notifies applicants confirming withdrawn applications and the date when it was withdrawn (if the withdrawal was not made by the applicant in writing).	M	

Access applications

Transferring access applications			
3.17	Requirement		NA NC C C+
3.17.1	➤ Agency-initiated transfers		
	<ul style="list-style-type: none"> ○ When transferring access applications to another agency, the transferring agency gets the consent of the other agency and: <ul style="list-style-type: none"> • confirms that the other agency is known to hold the information applied for and information relates more closely to functions of that other agency or • decides that it does not hold the information and the other agency is known or reasonably expected to hold the information 	M	NC
	<ul style="list-style-type: none"> ○ Transfers applications within 10 working days from when the application was received. 	M	
3.17.2	➤ Applicant-initiated transfer		
	<ul style="list-style-type: none"> ○ If an applicant asks to transfer an access application to another agency, and the agency agrees that application should be transferred because the information relates more closely to the functions of the other agency, the agency is aware that it does not need to obtain the consent of other agency before making the transfer. 		C
3.17.3	➤ Notice of transfer of application		
	<ul style="list-style-type: none"> ○ When transferring access applications to another agency, the agency provides notice of the transfer to the applicant, noting the date of transfer and the agency to which it was sent. 	M	Not reviewed
3.17.4	➤ Effect of transfer of application		
	<ul style="list-style-type: none"> ○ When transferring access applications to another agency, the agency applies its discretion to refund the application fee or transfer the application fee to the other agency. 	D	C+
	<ul style="list-style-type: none"> ○ If the agency receives a transferred application, the agency does not charge an application fee for the application. 	M	
	<ul style="list-style-type: none"> ○ If the agency receives a transferred application, it applies its discretion in relation to processing charges. 	D	

Access applications

Processing charges			
3.18	Requirement		NA NC C C+
3.18.1	➤ Notice of processing charges		Not reviewed
	○ The agency gives notice of whether processing charges will be payable for access to information, and indicates how those charges have been calculated.	M	
3.18.2	➤ Processing charges for dealing with access applications		Not reviewed
	○ Applies its discretion to charge a \$30 per hour processing charge for dealing with an access application.	D	
	○ Calculates processing time for an application as total amount of time necessary to be spent by any officer in: <ul style="list-style-type: none"> dealing efficiently with the application (including consideration of the application, searching for records, consultation, decision-making and any other function exercised in connection with deciding the application) providing access in response to the application. 	M	
	○ Counts the \$30 application fee as payment towards any processing charge payable by the applicant.	M	
	○ Applies its discretion to make access to the information conditional on payment of a processing charge.	D	
3.18.3	➤ Late decisions		Not reviewed
	○ Refunds applications fees paid by an applicant if an application is not decided within time, even if the agency continues to deal with the application and subsequently decides on the application, giving notice of its decision.	M	
	○ Waives processing charges for dealing with an access application if it is not decided within time.	M	

Discounted processing charges			
3.19	Requirement		NA NC C C+
	○ Applies its discretion to reduce an applicant's processing charge by 50% if: <ul style="list-style-type: none"> the applicant is suffering financial hardship the information is of special benefit to the public. 	D	Not reviewed
	○ If so, the agency credits the application fee as the first two hours of processing time (not just the first hour).	M	
	○ Applies its discretion to refuse a discount if the applicant is making the application to obtain a discount for someone else.	D	

Access applications

Waiving processing charges			
3.20	Requirement		NA NC C C+
3.20.1	➤ Public information		Not reviewed
	○ Provides a full waiver if the information applied for is made publicly available within three working days of providing access.	M	
3.20.2	➤ Personal information		Not reviewed
	○ Waives the first 20 hours of processing charges for access to personal information about the applicant (where the applicant is an individual).	M	

Advance deposits			
3.21	Requirement		NA NC C C+
3.21.1	➤ Advance deposits for payment of processing charges		Not reviewed
	○ Notifies the applicant if the agency exercises its discretion to request an advance deposit	M	
	○ When providing notice to an applicant that the agency requires an advance deposit, the agency: <ul style="list-style-type: none"> • includes the processing charges for work already undertaken by the agency in dealing with the application • includes the estimated processing charges for work expected to be undertaken by the agency in dealing with the application • specifies a date by which the advance deposit must be paid (at least four weeks after the date the notice is given) • states that if the advance deposit is not paid by the due date the agency may refuse to deal further with the application, which will result in any fee and/or deposit already paid being forfeited. 	M	
	○ Applies its discretion to extend the date by which an advance deposit must be paid.	D	
	○ If the agency exercises its discretion to extend the date by which an advance deposit must be paid, it gives notice to the applicant of the extension (indicating the new date by which the advance deposit must be paid).	M	
3.21.2	➤ Maximum advance deposit		Not reviewed
	○ If the agency charges an advance deposit, it only charges 50% or less of the estimated total processing charge.	M	
	○ If the agency charges more than one advance deposit, it only charges, as a total of all the advance deposits, 50% or less of the estimated total processing charge.	M	

Advance deposits				
3.21	Requirement			NA NC C C+
3.21.3	➤ Result of failing to pay advance deposit			Not reviewed
	○ Applies its discretion to refuse to deal with an application if an applicant fails to pay an advance deposit.	D		
	○ If so, the agency gives notice to the applicant of its decision to refuse to deal further with the application.	M		
3.21.4	➤ Refund of advance deposit			Not reviewed
	○ Refunds any advance deposit(s) paid by the applicant to the extent that the amount(s) paid exceed the total processing charges for dealing with the application.	M		
	○ Refunds any advance deposit paid if the agency does not decide an application within time.	M		

Internal review of access application decisions

4. Internal review of access application decisions

Reviewable decisions						
4.1	Requirement		NA	NC	C	C+
	➤ Understanding reviewable decisions					
	<ul style="list-style-type: none"> ○ Aware which of its decisions in respect of an access application are reviewable decisions for the purposes of the GIPA Act. <p><i>Note: The list of reviewable decisions can be found in section 80 of the GIPA Act. Internal review can be limited to a particular aspect of a reviewable decision (s82(3)).</i></p> <p><i>An internal review is not available if the decision is made by the principal officer of the agency or if the agency is a minister (s82(2)).</i></p>	M			C	

Time limits						
4.2	Requirement		NA	NC	C	C+
	➤ Time limit for applying for internal review					
	<ul style="list-style-type: none"> ○ Aware that an applicant can apply for an internal review for 20 working days after the notice of the decision is given to the applicant (or 20 working days after a deemed refusal), and that the agency can agree to accept an application for internal review out of time. 	M			C	

Fees and charges						
4.3	Requirement		NA	NC	C	C+
4.3.1	➤ Fees for internal reviews					
	<ul style="list-style-type: none"> ○ Aware that the fee payable by the applicant for an internal review is \$40. 	M			C	
	<ul style="list-style-type: none"> ○ Aware that no fee is payable for an internal review of a decision to refuse to deal with an access application if the decision arises because the agency did not decide the access application within time (and as a result is deemed to have refused to deal with the application). 	M				
4.3.2	➤ Processing charges for internal reviews					
	<ul style="list-style-type: none"> ○ Aware that it is not entitled to impose any processing charges for work done in connection with an internal review. 	M			C	

Internal review of access application decisions

Internal review process			
4.4	Requirement		NA NC C C+
4.4.1	➤ Acknowledging receipt		Not reviewed
	○ Acknowledges receipt of applications for internal review by notice to the applicant as soon as practicable after receiving the application and in any event within five working days after the application is received.	M	
4.4.2	➤ Conducting internal reviews		Not reviewed
	○ Internal reviews are conducted by making a new decision, as if it were made at the time the application was originally received and as if the original decision had not been made.	M	
	○ Internal reviews are always conducted by someone who is not the original decision maker and not less senior than the original decision maker.	M	
4.4.3	➤ Determining internal reviews		Not reviewed
	○ Makes its decision on internal reviews and gives the applicant notice of that decision within 15 working days after receiving the application for internal review. <i>Note: The review period can be extended by up to 10 working days if consultation is required with another person with whom the agency has not previously consulted in relation to the application. The agency must give the applicant notice of any extension of the review period (before the review period ends) and indicate the date on which the extended review period will end. The review period can also be extended by agreement with the applicant.</i>	M	
	○ If a decision on the internal review is not made within the review period the agency notifies the applicant that the agency is deemed to have made the original decision again and refunds any fees paid to the agency for the review.	M	
4.4.4	➤ Extending review periods		Not reviewed
	○ If more than one reviewable decision is made in respect of a particular access application, the agency extends the review period to the end of the review period for the last of those decisions.	M	

5. Private sector contractors

Contracts with private sector contractors						
5.1	Requirement		NA	NC	C	C+
	<p>➤ Access to information</p> <p>○ If the agency enters into contracts with a private sector entity (the contractor) under which the contractor is to provide services to the public on behalf of the agency, the agency ensures that the contract provides for the agency to have an immediate right of access to information that</p> <ul style="list-style-type: none"> • relates directly to the performance of the services by that contractor • is collected by the contractor from members of the public to whom it provides, or offers to provide, the services <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • is received by the contractor from the agency to enable it to provide the services. <p><i>Note: A reference in the GIPA Act to government information held by an agency includes information held by a private sector entity to which the agency has an immediate right of access. This means that an informal application or an access application can be made to the agency for that information.</i></p>	M	Not reviewed			

Public interest considerations

6. Public interest considerations

Public interest test				NA	NC	C	C+
6.1	Requirement						
6.1.1	➤ Public interest test						
	<ul style="list-style-type: none"> ○ Applies the public interest test when considering whether or not to release government information. <i>Note: This test applies to information released both formally and informally. The public interest test is found in section 13 of the GIPA Act.</i> 	M				NC	
	<ul style="list-style-type: none"> ○ Under the GIPA Act, there are a limited number of public interest considerations against disclosure. These are the only considerations that may be taken into account under the GIPA Act for the purpose of deciding whether there is an overriding public interest against disclosing government information. 						
	<p>Right to information officers and other relevant people in the agency know what these considerations are and where to find them.</p> <p><i>Note: They are listed in schedule 1 and in section 14 of the GIPA Act.</i></p>	M					
6.1.2	➤ Applying the public interest test						
	<ul style="list-style-type: none"> ○ Knows the objects of the GIPA Act. <i>Note: See section 3 of the GIPA Act</i> 	M				NC	
	<ul style="list-style-type: none"> ○ Exercises its functions so as to promote the objects of the GIPA Act. 	M					
	<ul style="list-style-type: none"> ○ When applying the public interest test, has regard to all relevant guidelines issued by the Information Commissioner. 	M					
	<ul style="list-style-type: none"> ○ Disregards as irrelevant the fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government when applying the public interest test. 	M					
	<ul style="list-style-type: none"> ○ Disregards as irrelevant whether disclosure of information might be misinterpreted or misunderstood by any person. 	M					
	<ul style="list-style-type: none"> ○ Applies its discretion to consider that disclosure cannot be made subject to any conditions on the use or disclosure of information. 	D					

Public interest considerations

Considering personal factors when applying the public interest test			
6.2	Requirement		NA NC C C+
	➤ Personal factors of the applicant		Not reviewed
	<ul style="list-style-type: none"> ○ Applies its discretion to consider the personal factors of the applicant when deciding whether there is an overriding public interest against disclosure of information, including: <ul style="list-style-type: none"> • the applicant’s identity and relationship with any other person • the applicant’s motives for making the access application • any other factors particular to the applicant. 	D	
	<ul style="list-style-type: none"> ○ Applies its discretion to take into account personal factors of the applicant as factors in deciding whether to provide the applicant with access to the information 	D	
	<ul style="list-style-type: none"> ○ Applies its discretion to request an applicant to provide evidence about their personal factors (relevant to a decision by the agency) to demonstrate that there is no overriding public interest against disclosure. 	D	
	<ul style="list-style-type: none"> ○ Applies its discretion to inquire into or verify claims made by an access applicant. 	D	

7. Reporting

Agencies' requirements			
7.1	Requirement		NA NC C C+
7.1.1	<p>➤ Annual reports prepared and provided</p> <ul style="list-style-type: none"> ○ Prepares annual reports within four months of the end of the reporting year and submits these reports to the agency's Minister. ○ Provides annual reports to the Information Commissioner within four months of the end of the reporting year. <p><i>Note: Reporting year is the financial year of the agency for the purposes of the Annual Reports (Departments) Act 1985 or the Annual Reports (Statutory Bodies) Act 1984, or if the agency does not have a financial year for the purposes of either of those Acts, the year ending 30 June.</i></p>	M	Not reviewed
7.1.2	<p>➤ Content of annual reports</p> <ul style="list-style-type: none"> ○ Annual reports fulfil all requirements under the regulations. <p><i>Note: These requirements are in the regulations to the GIPA Act.</i></p>	M	Not reviewed

Ministers' requirements			
7.2	Requirement		NA NC C C+
7.2.1	<ul style="list-style-type: none"> ○ The Minister furnishes the Minister administering the GIPA Act with such information as the Minister administering the GIPA Act may require, on or before 31 August each year. 	M	Not reviewed
7.2.2	<ul style="list-style-type: none"> ○ Tables annual reports under the GIPA Act in each House of Parliament as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the <i>Annual Reports (Departments) Act 1985</i> or the <i>Annual Reports (Statutory Bodies) Act 1984</i>. 	M	Not reviewed

8. Notices

Form of notices		NA	NC	C	C+
8.1	Requirement				
8.1.1	➤ Notices				
	○ Given in writing.			C	
	○ Include the date of the decision or other action of the agency with which the notice or notification is concerned.				
	○ Include a statement that gives details of any right of review provided by the GIPA Act in respect of any decision of the agency with which the notice or notification is concerned (including details of the period within which any such right of review must be exercised).				
	○ Include the contact details of an officer of the agency to whom inquiries can be directed in connection with the decision or other action of the agency with which the notice or notification is concerned.				
	○ Notices or notifications given under the GIPA Act do not disclose any information for which there is an overriding public interest against disclosure.				

Excluded information and conclusive overriding public interests against disclosure

9. Excluded information and conclusive overriding public interests against disclosure

Excluded information						
9.1	Requirement		NA	NC	C	C+
9.1.1	<ul style="list-style-type: none"> ➤ Understanding excluded information 					
	<ul style="list-style-type: none"> ○ Aware of all excluded information that applies to it. <i>Note: Excluded information is listed in schedule 2 of the GIPA Act.</i> 	M		NA		
9.1.2	<ul style="list-style-type: none"> ➤ Excluded information of other agencies 					
	<ul style="list-style-type: none"> ○ If the agency receives an access application for information that it believes to be the excluded information of another agency, it asks the other agency whether it consents to disclosure of the information before deciding the access application. 	M		NC		

Conclusive presumptions of overriding public interest against disclosure						
9.2	Requirement		NA	NC	C	C+
	<ul style="list-style-type: none"> ➤ Conclusive presumption of overriding public interest against disclosure 					
	<ul style="list-style-type: none"> ○ Aware of all (if any) conclusive presumptions of overriding public interest against disclosure that apply to information held by that agency. <i>Note: Conclusive presumptions of overriding public interests against disclosure can be found in schedule 1 of the GIPA Act.</i> 	M		Not reviewed		

Transitional arrangements

10. Transitional arrangements

Freedom of information applications						
10.1	Requirement		NA	NC	C	C+
10.1.1	<ul style="list-style-type: none"> ➤ Applications made before 1 July 2010 <ul style="list-style-type: none"> ○ Applies the <i>Freedom of Information Act 1989 (FOI Act)</i> in respect of all applications under that Act, and determinations made in respect of such applications, for access to the agency's documents or a Minister's documents that were made or determined before 1 July 2010. 	M	Not reviewed			
10.1.2	<ul style="list-style-type: none"> ➤ Applications made 1 July 2010 to 1 July 2011 <ul style="list-style-type: none"> ○ Deals with all applications for access to government information made between 1 July 2010 and 1 July 2011 apparently made under or for the purpose of the FOI Act as deemed to state that they are made under the GIPA Act. 	M	Not reviewed			
10.1.3	<ul style="list-style-type: none"> ➤ FOI amendment of records applications <ul style="list-style-type: none"> ○ Applies the FOI Act (as if it had not been repealed) to and in respect of all applications under that Act for amendment of the agency's records that were made or determined before the repeal of that Act. ○ Applies the FOI Act (as if it had not been repealed) to and in respect of all determinations made in respect of any such application (whether made before or after the repeal of that Act). ○ Applications to the agency for amendments of the agency's records that are made between 1 July 2010 and 1 July 2011 that state the application is made under or for the purpose of the FOI Act (or Part 4 of that Act) treated as though the applications state that they were made under Part 6A of the <i>Privacy and Personal Information Protection Act 1998</i> and dealt with accordingly. 	M M M	Not reviewed			

Register of government contracts						
10.2	Requirement		NA	NC	C	C+
	<ul style="list-style-type: none"> ○ Aware that requirements under the GIPA Act concerning government contracts with the private sector do not apply to government contracts entered into by or on behalf of the agency before 1 January 2007. ○ Aware that the open access requirements of the GIPA Act do not apply to government contracts entered into by a state owned corporation or local authority before 1 July 2010. 	M M	Not reviewed			

11. Local council specific requirements

Additional open access information						
11.1	Requirement		NA	NC	C	C+
	<ul style="list-style-type: none"> Aware of and complies with the additional open access information requirements for local authorities. <p><i>Note: additional open access requirements for local authorities can be found in schedule 1 to the Government Information (Public Access) Regulation 2009, which can be found in schedule 5 to the GIPA Act</i></p>	M	NA			

Availability of open access information						
11.2	Requirement		NA	NC	C	C+
	<ul style="list-style-type: none"> Makes its open access information publicly available for inspection free of charge to any person at the office of the council during ordinary office hours. 	M	NA			
	<ul style="list-style-type: none"> Makes its open access information publicly available by providing a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not more than the reasonable cost of photocopying. 	M	NA			



Jennifer Dolbel
Information Access Unit
Locked Bag 5102
Parramatta NSW 2124

3 November 2010

Dear Jennifer,

Decisions for reconsideration pursuant to section 93 of the *Government Information (Public Access) Act 2009 (GIPA Act)*

I refer to the Information Commissioner, Deirdre O'Donnell's, correspondence with the NSW Police Commissioner, Andrew Scipione and NSW Police Deputy Commissioner, Catherine Burn of 13 October 2010 and 14 October 2010.

The Information Commissioner and the Police Commissioner agreed for the Office of the Information Commissioner (OIC) to return to NSW Police (agency) certain reviewable decisions for reconsideration pursuant to section 93 of the GIPA Act. The \$40.00 fee usually payable will be waived and the agency will have 20 working days to finalise these matters.

The OIC will return matters where it appears from the decision record or upon review of the agency file that the agency has not applied the provisions of the GIPA Act properly in making its decision.

Accordingly, please reconsider the following files:

1. [REDACTED]
OIC file reference: 10-045, IUA file reference: 101539
2. [REDACTED]
OIC file reference: 10-049, IAU file reference: 101382
3. [REDACTED]
OIC file reference: 10-062, IAU file reference: 101528:MG
4. [REDACTED]
OIC file reference: 10 -069, IAU file reference: 101525:MP

The **attached** table summarises the OIC's feedback in relation to these matters. Please note these comments do not constitute formal recommendations by the OIC, however, we encourage the agency to use this feedback as guidance when reconsidering these applications.

The OIC has suspended our external review of these matters pending reconsideration by the agency. We will advise the review applicants that their applications have been returned to the agency for reconsideration and the agency has a decision period of 20 working days to reconsider and make a new decision.

Please communicate your new decision to the applicants directly and provide a copy to the OIC. If an applicant remains dissatisfied with the agency decision, they can request the OIC to resume processing their external review request. If not the OIC will close their external review file.

promoting open government

Level 11, 1 Castlereagh Street, Sydney NSW 2000 • GPO Box 7011, Sydney NSW 2001
t 1800 INFOCOM (1800 463 626) • f 02 8114 3756 • e oinfo@oic.nsw.gov.au

www.oic.nsw.gov.au

If you have any questions about this report please contact the Information and Privacy Commission on 1800 472 679.

Enc. 3

File reference	Relevant section of the GIPA Act	OIC feedback
<p>██████████ File references: 10-045/101539</p>	<p>Section 14 Table 3 (d)</p>	<ul style="list-style-type: none"> ➤ Reassess the relevance and application of this section of the GIPA Act to some of the information requested by ██████████, namely the information listed at points 1, 5, 7, 8, and 9. Bear in mind that for this public interest consideration against disclosure to apply release has to result in a reasonable expectation of prejudice to the fair trial, the impartial adjudication of a case or a person's right to procedural fairness. ➤ Consider whether any of the information sought by ██████████ would not be included in a brief of evidence to be served or has not been included in a brief already served.
<p>██████████ File references: 10-049/101382</p>	<p>Section 14 Table 1(d) and 3(a) Sections 54 and 55</p>	<ul style="list-style-type: none"> ➤ Reassess the relevance and application of Table 3(a) - the applicant and ██████████ attended the police station together to give their statements. Further the complainant is a colleague of the applicant and as the senior officer of the complainant the applicant is likely to know all of the personal information that has been redacted. ➤ Reassess the relevance of Table 1(d) and consider section 55 – the complainant has stated that she was making the police report to be used in the internal investigation conducted by her employer following advise she had received from her supervisor. It is for this purpose the access applicant has requested this information. Consider what prejudice can be reasonably expected if this information is disclosed. ➤ Consider the necessity for third party consultations under section 54 (1) and carry out the necessary third party consultations. Note that the applicant provided ██████████ mobile number when making the application. A letter of authority has also been provided to the OIC, which is attached for the purposes of reconsidering this application (Attachment 1). ➤ Consider that at the time of application the investigation was suspended and it was not a current investigation.
<p>██████████ File references: 10-062/101528:MG</p>	<p>Section 14 Table 1(d) and 3 (a) Sections 54 and 55</p>	<ul style="list-style-type: none"> ➤ Consider the relevance and application of these public interest considerations against disclosure bearing in mind that two of the witnesses are the applicant's children and the third witness is a friend of one of these children. ➤ Consider the necessity for third party consultation pursuant to section 54 (1) and carry out any necessary third party consultations. The applicant's solicitors have advised the OIC that the authorisation letters provided to ██████████ Police station from all three witnesses were provided to the IAU and these three authorisations are attached for the

		<p>purposes of reconsidering this application (Attachment 2) [these attachments have been removed from attachment 2 to the Compliance Report dated 28 June 2011].</p> <ul style="list-style-type: none"> ➤ In apply the public interest test - consider the personal factors of the applicant as per section 55.
<p>File references: 10 -069/ 101525:MP</p>	<p>Section 14 Table 3(a) Section 74</p>	<ul style="list-style-type: none"> ➤ Reassess the applicability of this public interest consideration against disclosure in relation to the applicant's request for the following information - 'time, place +nature of all other penalties'. The applicant does not appear request any personal information contained in these records. ➤ Where personal information is noted on the records consider section 74 of the GIPA Act.

**Office of the Information Commissioner's provisional Compliance Report into NSW Police Force compliance with the
Government Information (Public Access) Act 2009**

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>Recommendation one</p> <p>The Police Force identifies and makes publicly available on its website the Police Force's policy documents. In light of the resource constraints faced by the Police Force, the OIC recommends that these documents are made available on the Police Force website no later than 1 July 2011.</p>	<p>Agree in Part</p> <p>The NSW Police Force Publication Guide already includes a number of policy documents on the police website. The Police Force possesses a large number of policy documents and the Performance Improvement and Planning Command is currently coordinating the review of all documents that may fit the requirements of the Act, to determine which need to be published on the internet. The project is large and ongoing and while it is being progressed as a priority, given that it is May it is not possible to complete such an undertaking by 1 July. Policy documents are being uploaded to the Publication Guide as soon as they become available. For example, the TASER use guidelines were recently uploaded to the internet. The NSWPF Handbook, which is a large and key document, will be published on the website in the near future.</p>	<p>The OIC appreciates that the task of identifying the Police Force's policy documents is large and ongoing. The OIC acknowledges the progress made by the Police Force on this requirement, including the recent availability of several chapters of the NSWPF Handbook. The OIC also notes that the GIPA Act obligated the Police Force to have all of its policy documents available in accordance with that Act from 1 July 2010.</p> <p>While the project remains ongoing, the OIC recommends that the Police Force publish on its website no later than 1 July 2011 a list of its policy documents and the date when the Police Force anticipates having each policy document publicly available on its website.</p> <p>The OIC recommends that an index to the Police Force's policy documents be provided on its website, with hyperlinks to the provided documents, in a space that is separate to its publication guide.</p>
<p>Recommendation two</p> <p>The Police Force reviews all past, current and future GIPA applications for non-personal information, whether received from media, the opposition, individuals or other applicants, to decide whether information about the application should be included in the Police Force's disclosure log.</p>	<p>Agree</p> <p>From 1 July 2010 onwards the Police Force as standard practice has reviewed all non-personal applications for possible inclusion on the disclosure log. Consistent with the Act, those that are considered of public interest are placed on the disclosure log. As most informal applications are seeking access to policy documents, which are being made publicly available on the Publication Guide, these requests are not considered to be in</p>	<p>The OIC acknowledges the progress made by the Police Force in relation to its disclosure log, represented by the substantial increase in currently available entries in the disclosure log compared to those at the date of the compliance review.</p> <p>The OIC notes that the GIPA Act does not require agencies to include information relating to informal requests for information in its disclosure log.</p> <p>The OIC recommends that an index to the Police Force's policy documents be provided on its</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
	the public interest to include in the disclosure log.	website, with hyperlinks to the provided documents, in a space that is separate to its publication guide.
<p>Recommendation three</p> <p>The Police Force provides on its website a record of the open access information that the Police Force does not make publicly available.</p>	<p>Agree</p> <p>This recommendation is part of the Performance Improvement and Planning Command project described at recommendation one above. The identification of those relevant documents that the NSW Police Force does not make publicly available is being made during the process of determining which documents will be published. Once this project has been completed a list will be published containing the information.</p>	<p>The OIC also notes that the GIPA Act obligated the Police Force to make this information publicly available from 1 July 2010.</p> <p>While the project remains ongoing, the OIC recommends that the Police Force publish on its website no later than 1 July 2011 an initial list of the open access information that the Police Force does not make publicly available, and that the Police Force adds to this list as the project progresses.</p>
<p>Recommendation four</p> <p>The Police Force delegates a person responsible for coordinating the proactive release of information, or if such a delegation is already in place, circulates the name and contact details of that person to all staff of the Police Force.</p>	<p>Agree</p> <p>This delegation was created for the commencement of the GIPA Act, pursuant to section 7. As the Police Force is a large organisation the delegation includes the Commissioner of Police, the Deputy Commissioners, the General Counsel and the Director, Public Affairs Branch, as well as the Manager and Coordinator of the Information Access Unit. These delegations will be placed on the Police Force website so that they are available to police employees and the public.</p>	<p>The OIC is pleased to note that the NSW Police Force will make these delegations publicly available on its website.</p>
<p>Recommendation five</p> <p>The Police Force develops a program for proactively releasing government information and presents a copy of that plan to the OIC for feedback.</p>	<p>Agree in Part</p> <p>The Police Force already has a process in place whereby the Information Access Unit continuously monitors the information that is released to identify any trends. To date, the only trend appears to be for statistical data on crime and sick leave and the release of this data requires updating whenever</p>	<p>Section 7 of the GIPA Act requires agencies to have a program for the proactive release of government information and to review this program periodically.</p> <p>The OIC notes that the Police Force has a process in place for monitoring trends of information</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
	<p>they are asked for. Also, the release of crime statistics is primarily the responsibility of the NSW Bureau of Crime Statistics and Research, which provides regular releases on the subject. The Performance Improvement and Planning Command also monitors the NSW Police Force Policy and Procedures intranet site, which was created to hold all major police policy documents.</p>	<p>requested for proactive release and recommends that the Police Force incorporate this process into its program for proactive release.</p>
<p>Recommendation six</p> <p>The Police Force implements a process to review whether an application without an application fee is intended to be an informal request, or whether the application is an invalid access application. As a matter of good practice, the Police Force should call the applicant to discuss whether they intended to make an informal request or a formal application and, if the application is found to be a valid access application, the Police Force could consider waiving the processing fee.</p>	<p>Agree in Part</p> <p>In order to clarify whether an applicant intended their GIPAA application to be formal or informal, all applications received by the Police Force must be on either the 'Formal' or 'Informal' application form. However, it can be the case that all other application requirements are met except that the fee is missing. Due to the volume of applications received by the IAU, which can be over 700 a month, it is not practical to call an applicant every time the fee is missing. Also, an application is only valid when all requirements of the Act are met, and one of these requirements is inclusion of the application fee.</p> <p>To assist applicants with this issue the Information Access Unit amended the police application form to include a checklist which contains reminders for the fee and forms of identification to be attached if seeking personal information. The new application form was made available on Monday 18 April, 2011. The IAU also addresses this issue by writing to the applicant and informing them of why their application was invalid. Given the high volume of applications, it is not considered best practice to have applications on file awaiting payment. The resultant increased records management and</p>	<p>The OIC acknowledges that the NSW Police Force has updated its application form, however, while noting the resource constraints faced by the IAU, the OIC recommends that the option of calling an applicant if an application fee is missing is adopted as part of the IAU's focus on good practice and frontline service in meeting the objects of the GIPA Act.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
	double handling by staff is not considered a good use of available resources.	
<p>Recommendation seven</p> <p>The Police Force accepts informal requests for information by fax, email or post.</p>	<p>Disagree</p> <p>While this proposal may be viable for agencies processing small numbers of GIPAA applications, the option is not practical for the Police Force. In 2009-10 the NSW Police Force processed 7,421 Freedom of Information applications. Given this high volume of applications and the current level of IAU facsimile and email traffic, the facsimile and email systems could not cope with the number of pages and emails, plus the size of email attachments, that would occur each day. The resulting inability to receive applications by the NSW Police Force would not provide for good customer service. It is noted that the report states that this recommendation is not a matter of compliance with the Act.</p>	<p>The OIC recognises the high volume of applications received by the Police Force and that a failure to accept informal requests by fax, email or post is not a breach of the GIPA Act. However, the OIC considers that the practice of accepting informal requests for information by fax, email or post would improve the accessibility of the IAU to members of the public.</p>
<p>Recommendation eight</p> <p>The Police Force provides information on its website about what type of correspondence will be accepted by email or fax and what type must be sent by post.</p>	<p>Agree</p> <p>The NSW Police Force internet Publication Guide will be amended to make clear that applications will only be accepted by post. (At present the Publication Guide refers to applications being accepted in writing.) The current application form specifies that applications will only be accepted by post.</p>	<p>In light of the Police Force's current response to recommendation seven, above, the OIC commends the Police Force for amending its publication guide in this way and recommends that the Police Force also amend its webpage http://www.police.nsw.gov.au/services/information_access_unit_gipa at the section on this page where applicants download application forms.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>Recommendation nine</p> <p>The Police Force decentralises the application process so that informal requests and access applications can be submitted to any local area command (LAC) and payment made at a LAC, and the LAC advises the IAU when an application or payment is made.</p>	<p>Disagree</p> <p>Due to the high volume of applications received by the Police Force, and the fact that the agency has over 19,500 employees spread across the entire state, the NSW Police Force could not adopt this recommendation as well as maintain compliance with the Act. The tight time restraints placed upon processing applications by the GIPA Act mean that the Police Force would be unable to maintain quality control of timely and correct processing of applications if this proposal was adopted.</p> <p>The core function of the Local Area Commands (LACs) is law enforcement. To require Local Area Commands to accept applications and process fees would place an extra administrative burden on LAC staff and would also require most staff to be sufficiently conversant with the GIPA Act to ensure compliance. It would add unnecessary handling for a LAC to accept an application and then forward it to the IAU. This would pose a significant risk of not meeting legislative requirements for accepting valid applications and further, place a heavy burden on the LAC and the IAU to ensure that an applicant was notified in writing within 5 days of receipt of the application, as required. If an application were received at a LAC, the resulting time delay and increased risk of applications going missing on route to the IAU would also put an added and unnecessary risk on the Police Force of not being able to process applications within the required 20 working day time limit.</p> <p>The purpose of the Information Access Unit is to centralise the application process so that an applicant has a one stop shop point of contact in</p>	<p>The OIC is of the view that a decentralised system which provided for submitting applications and processing payments at a LAC would be of benefit to applicants who may not have easy access to a cheque or money order, as currently required by the Police Force.</p> <p>However, the OIC notes that this is a matter for the Police Force to determine.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
	<p>relation to their application. It also provides one access point into the Police Force for applications so that acceptance and processing can be carefully oversighted to ensure timely compliance. The IAU consists of staff with expertise in processing applications in accordance with the Act. At the current time, the IAU upon receiving an application notifies an applicant the same day that an application is received, and as the OIC Report notes, currently the Police Force is compliant with the time limits set out in the GIPA Act.</p>	
<p>Recommendation ten</p> <p>The Police Force implements a process to ensure that access applications are reviewed for validity based solely on the relevant provisions in the GIPA Act.</p>	<p>Agree</p> <p>The NSW Police Force currently ensures that the GIPA Act is complied with when assessing the validity of applications. It needs to be noted that the Police Force on average processes 7,000 applications a year. For example, the OIC Report notes that between 1 July and 12 October 2010, 14 requests for assistance on Police Force decisions were made to the Office of the Information Commissioner. Between 1 July and 30 September 2010, 2,109 applications were received by the Police Force. 14 requests for help represent less than 1% of applications processed by the Police Force during that time.</p> <p>On the occasion when errors are identified, whether internally or by external entities such as the OIC and brought to the attention of the Information Access Unit, immediate action is taken to rectify any mistakes. Also, if required, changes to interpretations or procedures are made to help ensure mistakes are not repeated. The assistance of the OIC in this continuous improvement process</p>	<p>The OIC notes the Police Force's commitment to a continuous improvement process and acknowledges the progress achieved to date in relation to its compliance with the GIPA Act.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
	is acknowledged and appreciated.	
<p>Recommendation eleven</p> <p>The Police Force assists applicants who make invalid applications to make valid access applications, including by communicating with such applicants by telephone or email as appropriate.</p>	<p>Agree in Part</p> <p>Due to the volume of applications received by the IAU, which can be over 700 a month, it is not practical to call an applicant every time an application is invalid. The Information Access Unit application form includes a checklist to help applicants to ensure their applications are valid. The IAU also addresses the reason for an application being invalid when writing to explain the outcome of the application.</p> <p>If an application is valid except that the description of the information sought is too broad, the IAU does currently contact the applicant to clarify what information the applicant is seeking. Contact is made mainly by telephone, but in some circumstances email contact is made if an applicant is unable to be contacted by telephone and has supplied an email address.</p>	<p>The OIC commends the NSW Police Force for updating its application form and for its work contacting applicants to clarify information sought if a request for information is too broad.</p>
<p>Recommendation twelve</p> <p>The Police Force requires staff to comply with section 54 of the GIPA Act. The OIC recognises that there will be times when it is unreasonable for the Police Force to consult with third parties, however this is not the default position provided for in the GIPA Act. The OIC recommends that the Police Force develop internal guidelines about when it will and will not consult and provide these guidelines to the OIC for feedback. Once finalised, the OIC recommends that these guidelines be</p>	<p>Agree</p> <p>To date the OIC has not issued any formal guidance to agencies on interpreting the consultation clauses in the GIPA Act. However, the Police Force, acting on feedback from the OIC on individual application reviews, has included a broader interpretation of the consultation clauses in its review process. The Police Force has thus already acted on this matter and is now consulting on the majority of applications as required. Given the high volume of applications, this decision</p>	<p>The OIC commends the Police Force on its improved consultation process and notes that it has already observed the application of this improved process in more recent reviews. The OIC also commends that Police Force on amending its application forms as a practical response to the OIC's recommendation.</p> <p>The OIC notes that any agency is welcome to raise with the OIC any questions about the application of the GIPA Act. The OIC is also available to provide further customised training to the Police Force and</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>incorporated into the compliance resource referred to at section 5.5 of the report.</p>	<p>represents a balancing act between competing clauses of the GIPA Act and has resulted in a decline in the timely processing of applications.</p> <p>The IAU has also amended the application forms to highlight pre-consultation requirements to applicants, alerting them to the possibility of the need for consultation. This has reduced the amount of time taken to consult with an applicant after an application has been received. Applicants are asked to seek authority from third parties prior to submitting the application. This action reduces the amount of time taken by IAU staff in contacting applicants for consultation purposes. To date the IAU has experienced a positive response. Several applicants have made it clear they do not require other persons' information, and in some cases have provided evidence that the third party does not have any objection to their information being released.</p> <p>It should be remembered that under the <i>Police Act 1990</i> the agency is required to deal with all information in a confidential manner. This places an extra burden on the Information Access Unit when considering the release of information.</p>	<p>would invites the Police Force to raise specific issues under the <i>Police Act 1990</i> in such training.</p> <p>The OIC notes the NSW Police Force response that complying with the consultation requirements in the GIPA Act has resulted in a decline in the timely processing of applications.</p>
<p>Recommendation thirteen</p> <p>The Police Force accepts and processes informal requests and access applications for incident reports as GIPA Act applications. In the alternative, the cost of processing a request for an incident report by the Insurance Services Unit is reduced to no more than \$30, to reflect the application fee payable by an applicant who</p>	<p>Disagree</p> <p>The NSW Police Force has replied to this issue previously in 2010 in response to a request from the NSW Ombudsman. As the OIC report states, section 59(1)(c) of the GIPA Act allows that an application need not be processed if the information being sought is usually available for purchase. As incident reports are available for purchase from the Insurance Services Unit (ISU),</p>	<p>The OIC maintains its position in its original recommendation as it considers the Police Force's application of section 59(1)(c) of the GIPA Act in this particular situation to be inconsistent with the objects of the GIPA Act.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>submits an access application.</p>	<p>relevant applicants are referred to the ISU and the GIPAA application fee refunded as a gesture of good will and good customer service. The ISU was specifically established to perform this function.</p> <p>The NSW Police Force does not agree with the OIC view that section 59(1)(c) is inconsistent with the Objects of the Act. The setting of user charges fees for such services is consistent with NSW Government policy and as the information asked for is provided without amendment or deletions, police procedure complies with the objects and sections 58 and 59 of the GIPA Act.</p>	
<p>Recommendation fourteen</p> <p>The Police Force provides the reasons for its decisions and findings on any material questions of fact underlying those reasons in its decision records when it refuses to provide access to information.</p>	<p>Agree</p> <p>The Information Access Unit continuously reviews how it has set out the reasons for its determinations. As part of this process the IAU has benefited from reviews conducted on individual applications by the OIC and adopted the recommendations provided. The Police Force looks forward to the development by the OIC of Guidelines on the GIPA Act that include guidance for all agencies on this aspect of the legislation.</p>	<p>The OIC commends the Police Force for its response to this recommendation.</p>

Provisional Compliance Report - 8 April 2011 Recommendations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>Recommendation fifteen</p> <p>The Police Force implements processes to ensure that staff always obtain the consent of the other agency before transferring an access application.</p>	<p>Agree in Part</p> <p>Since the commencement of the GIPA Act, it has always been Information Access Unit procedure that when transferring an application to another agency, the consent of that agency is sought. The IAU is unaware of any instances where consent was not sought prior to transfer, and such action would be contrary to police procedure.</p>	<p>OIC reviewers obtained the information that formed the basis of this recommendation from interviews with staff of the Police Force. The OIC commends the Police Force on its procedure and recommends that this procedure is revisited with all staff to ensure that the procedure is followed.</p>
<p>Recommendation sixteen</p> <p>The Police Force implements processes to ensure that the public interest test is correctly applied when deciding whether to release information. This requires the Police Force to identify the public interest factors in favour of disclosing information and the public interest factors against disclosure, and to balance these factors to decide whether there is an overriding public interest against disclosure. All staff should immediately stop referring to the FOI Act and its exemption model and consider the public interest test in light of the facts and circumstances of each application.</p>	<p>Agree in Part</p> <p>The Information Access Unit continuously reviews how it has applied the public interest test in its determinations. As part of this process the IAU has benefited from reviews conducted on individual applications by the OIC and adopted the recommendations provided. The Police Force looks forward to the development by the OIC of Guidelines on the GIPA Act that includes guidance to all NSW agencies on this aspect of the Act.</p>	<p>The OIC welcomes the response of the Police Force to this recommendation. Correctly applying the public interest test is central to compliance with the GIPA Act. The OIC is committed to continue to assist agencies and provide feedback on how this test is applied.</p>
<p>Recommendation seventeen</p> <p>The Police Force immediately ceases using the FOI Manual when dealing with access applications under the GIPA Act.</p>	<p>Disagree</p> <p>The Police Force looks forward to the development by the OIC of Guidelines on the GIPA Act to provide guidance for all NSW agencies on the interpretation and application of the new legislation. In the absence of official guidance on the GIPA Act, government agencies must each use the existing resources available, plus their growing body of experience over time, to help interpret and</p>	<p>The OIC is concerned by and strongly disagrees with the Police Force's statement that "the basic principles have not changed from the FOI to the GIPA Act." Guidance provided in the FOI Manual relates to a piece of legislation which is no longer in force, and as such the use of the FOI Manual in deciding access applications is redundant.</p> <p>The OIC has no present intention to replicate the FOI Manual for the GIPA Act regime. Rather, the</p>

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	<p>apply the Act.</p> <p>The NSW FOI Manual is one resource available to assist as the basic principles have not changed from the FOI to the GIPA Act. The Police Force will also continue to use this Manual in regard to relevant case law that to date has not changed.</p> <p>Once the OIC releases a replacement to the NSW FOI Manual or the Manual becomes irrelevant or outdated, the NSW Police Force will desist from using it as a resource. It should be noted, however, that in practice the NSW FOI Manual is rarely referred to by the IAU.</p>	<p>OIC's approach is to provide targeted advice, assistance and training.</p> <p>The OIC notes the Police Force's commitment to draft a compliance resource for internal use, with feedback from the OIC, as set out in sections 5.1 and 5.5 and observation four of the report. In the OIC's view, this resource will be of great use to the Police Force.</p>
Provisional Compliance Report – 8 April 2011 Observations	NSW Police Force response received 25 May 2011	Further OIC comments having considered the Police Force's response of 25 May 2011
<p>Observation one</p> <p>The Police Force could improve its processes around searching for information by requiring all Police Force staff to cooperate fully and efficiently with search requests issued by the IAU. In particular, the response rate of LACs could be monitored and if the LAC does not respond satisfactorily this could be recorded and reported to the relevant supervisor for their action.</p>	<p>Disagree</p> <p>Current procedures for collecting information from Local Area Commands do not need modification at this time. A Local Area or any other Command is required within 10 days to return documentation to the Information Access Unit. The majority of Commands do return documents within the required time frame. When they do not, IAU staff actively chase the outstanding documents and remind Commands of the legislative requirements. When a Command still does not respond appropriately, direct contact is made with the Commander, and immediate responses are then received. There has never been a case where a Command has not responded and a more</p>	<p>The OIC notes that this is a matter of good practice and ultimately a matter for the agency. The OIC does not make any further comments in relation to this observation.</p>

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	interventionist chain of command approach has had to be taken.	
<p>Observation two</p> <p>The Police Force would benefit from implementing a process to ensure that records held by a LAC can be obtained and returned to the IAU by any member of the LAC. Records should be accessible by all members of the LAC rather than attached to individual officers.</p>	<p>Disagree</p> <p>Under the <i>Police Act 1990</i> the agency is required to deal with all information in a confidential manner. To allow all members of a LAC to access all documents would create an unacceptable security risk and could potentially compromise prosecutions and people's safety. Such a radical option is not required as the procedures set out in the response to Observation One above are sufficient to receive the required information on time.</p>	<p>The OIC is concerned about potential delays and issues around sufficiency of search if information held at an LAC is only available to one person. In consideration of the issues raised in the Police Force's response to this observation, the OIC suggests that information should be accessible by at least two members of an LAC, such as an officer and their immediate supervisor.</p>
<p>Observation three</p> <p>The Police Force should recruit additional staff to resource the IAU to assist the IAU to process all applications in compliance with the GIPA Act.</p>	<p>Agree in Part</p> <p>At the time of the OIC review (October 2010) the Information Access Unit was experiencing a staff shortage. As of March 2011 the IAU has achieved a full complement of staff. All IAU staff have become trained in the GIPA Act, including training provided by the OIC on 8 February 2011. Procedures have also been put in place and are continuously updated to improve performance, and experience is being gained by staff in the interpretation of the new Act as they apply it to applications over time.</p> <p>Nevertheless, the Public Affairs Branch has been tasked to conduct a review of current staffing levels and practices at the Information Access Unit to ensure adequate resources are in place to retain compliance with the GIPA Act.</p>	<p>The OIC welcomes this response from the Police Force.</p>

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<p>Observation four</p> <p>The Police Force is encouraged to develop an in-house resource for all relevant Police Force staff to use when dealing with access applications under the GIPA Act. This resource should be based on the GIPA Act, may build off the information on the OIC's website, and could be reviewed by the OIC before being distributed to Police Force staff.</p>	<p>Agree</p> <p>The information Access Unit is currently updating its intranet site to provide more information to NSW Police Force employees on GIPAA and applications. IAU staff also attend Region and Command development days to provide training on matters regarding the handling of applications. The IAU will also develop an in-house resource including templates and guidelines for general use by staff.</p>	<p>The OIC welcomes the Police Force's response to this observation and reiterates its offer to provide advice and assistance in relation to the resource materials being developed.</p>
<p>Observation five</p> <p>The Police Force would benefit from regular staff meetings between IAU staff, at least on a monthly basis, to discuss access applications, the application of the public interest test, feedback and assistance from the OIC and other relevant discussion points.</p>	<p>Agree</p> <p>The IAU currently conducts fortnightly meetings and the team leaders conduct weekly meetings with their respective teams. At all times staff are able to approach the team leaders, coordinator and Manager of the IAU in relation to any issues that may arise or areas that they are unsure of.</p> <p>The Manager, Coordinator and Team Leaders also met on both a daily and weekly basis regarding reviews by the OIC or any other issues that arise. When required, the OIC is consulted on issues for which no current guidelines exist.</p>	<p>The OIC notes this positive response.</p>