



office of the  
information  
commissioner  
new south wales

The Hon Kerry Hickey MP  
Chair  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Parliament  
New South Wales 2000

31 January 2011

Dear Mr Hickey

I write to provide the Committee on the Office of the Ombudsman and the Police Integrity Commission with an update on the Office of the Information Commissioner (OIC) and my activities since my last report to you on 16 July 2010.

I do this in accordance with the Committee's role to oversight the Commissioner's functions as set out in section 44 of the *Government Information (Information Commissioner) Act 2009*, in particular in respect of the Committee's function to "monitor and review the exercise by the Commissioner of the Commissioner's functions".

This report follows the format of my previous report, and is guided by section 17 of the *Government Information (Public Access) Act 2009* (GIPA Act), which sets out the functions of the Information Commissioner. While this report focuses on the highlights under each of the headings, I would be pleased to provide the Committee with further information about any matter of special interest.

Apart from the work of the OIC in fulfilling its mandate under the GIPA Act, we have also been engaged in preparing for the formal merger with the Office of the Privacy Commissioner (formerly Privacy NSW).

The Information and Privacy Commission (IPC) was established on 1 January 2011 in accordance with the *Privacy and Government Information Legislation Amendment Act 2010*. Our activities in this regard will be the subject of a separate update to the Committee.

As well as providing this report to the Committee, I will also publish it on the OIC's website, consistent with the spirit of the GIPA Act.

Please do not hesitate to contact me either on my direct number, (02) 8071 7017, or by email, [deirdre.o'donnell@oic.nsw.gov.au](mailto:deirdre.o'donnell@oic.nsw.gov.au), if I can provide any further information.

Yours sincerely

Deirdre O'Donnell  
**Information Commissioner**

Att.

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 [oicinfo@oic.nsw.gov.au](mailto:oicinfo@oic.nsw.gov.au)

[www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)

## ACTIVITIES OF THE OFFICE OF THE INFORMATION COMMISSIONER NSW FOR THE PERIOD 1 JULY – 31 DECEMBER 2010

### Highlights for the reporting period

#### ENQUIRIES

- The OIC received more than 2200 contacts from agencies and the public.
- Around 82 per cent of contacts were on the 1800 INFOCOM number.
- 15 per cent of contacts were via email.
- Around 30 per cent of all contacts came from NSW government agencies, with local councils comprising more than 280 (12 per cent) of the total.
- A further 40 per cent came from the public.
- The balance came from a range of government and private entities.
- On average we handled 14 calls per day.
- Our aim is for same-day resolution of enquiries. In July we achieved this for 87 per cent of matters, progressing to more than 97 per cent for the months of October, November and December.
- We aim to respond to emails within five working days. On average, this target was met for 75 per cent of matters.

#### REVIEWS

- The OIC received 154 requests for assistance (generally either a request for a review of an agency decision or a complaint about how an agency responded to the GIPA Act).
- Reviews of agency decisions comprised 129 or just less than 84 per cent of matters received, of which 29 have been finalised. The remainder are open files that have been allocated to staff for action.
- Addressing this backlog is a top priority for the OIC at the start of 2011. For most of the reporting period two Review Officers handled the bulk of the caseload while new staff were recruited to meet demand. We now have four Review Officers to respond to the caseload.
- Complaints about how agencies are responding to the GIPA Act made up 25 or just more than 16 per cent of matters. Of these, 22 have been finalised.
- In order to improve the timeliness and flexibility of our handling of complaints and reviews, a new business process has been introduced involving an early resolution team to assess and settle those matters that can be promptly dealt with.
- Our 2011 target is to handle 80 per cent of all matters within 60 business days and the rest within 120.

#### PUBLICATION GUIDES

- All agencies were required to have a publication guide in place by 31 December 2010, and to notify the Information Commissioner prior to adopting the guide.
- To assist agencies develop their guides, the OIC published a knowledge update, *Good practice for creating publication guides*, in July 2010.
- As at 31 December, we had received guides from 72 per cent of agencies (300 out of a possible 418).
- 83 per cent of local councils met the compliance timeframe.



## **COMMUNICATIONS AND OUTREACH**

- The Right to Information Roadshow visited 11 locations in regional NSW.
- 696 people attended, with more than 85 per cent coming from government agencies, including local councils.
- The roadshow is also being held in metropolitan Sydney, and to date 401 people have attended.
- Overall satisfaction with the sessions has exceeded 85 per cent.
- The OIC's e-newsletter is distributed monthly to 1500 subscribers.
- The website has received 210 000 hits, based on an average monthly rate of 35 000.
- The OIC's public information brochure is available in 39 community languages, with more than 60 000 copies distributed to community centres across NSW.
- Media releases and responses to media enquiries about the OIC and the GIPA Act have resulted in more than 50 news stories in newspapers, magazines, radio and television programs and online blogs.
- The Commissioner and staff have made more than 79 presentations about the GIPA Act to a range of audiences, including the roadshows.

## **GUIDELINES UNDER THE GIPA ACT**

- The OIC's first Guideline was published in July 2010. It deals with the pecuniary interest returns of local councillors and designated persons and how this information should be made available.
- A consultation paper about personal information and development applications was launched in November 2010. The deadline for responses from local councils and members of the public was 14 January 2011. To date, 68 submissions have been received. The outcome of this consultative process will be published on the OIC's website and may result in a second Guideline.

## OVERVIEW OF ACTIVITIES

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The OIC is structured into two business teams: Policy and Good Practice and Casework and Compliance, supported by a corporate services team. The business teams have been set up to achieve the OIC's objectives under the GIPA Act.

The work of these two teams is referred to in explanations of the OIC's activities below.

### 1 PROMOTE

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*This activity comes from s.17(a) of the GIPA Act: "to promote public awareness and understanding of this Act and to promote the object of this Act",*

The OIC's promotion activities are primarily the responsibility of the Policy and Good Practice Team. Key achievements under this heading have been as follows:

#### 1.1 The Right to Information Regional Roadshow

- The Information Commissioner and staff visited 11 locations across regional NSW from 20 August to 8 September 2010.
- 696 people attended (599 attending sessions for government agencies and 101 attending sessions for non-government agencies and members of the public).
- Feedback provided by 65 per cent of attendees gave an overall high satisfaction level of 91 per cent.

#### 1.2 The Right to Information Metropolitan Roadshow

- The OIC delivered 10 events at nine locations across metropolitan Sydney (two events being held at Parramatta) from 19 October to 6 December. Five events will be held in early 2011.
- 401 people have attended these sessions to date (329 attended sessions targeted for government agencies and 72 attended sessions for members of the public and non-government agencies).
- Feedback provided by 91 per cent of attendees gave an overall high satisfaction level of 86 per cent.

#### 1.3 Education and Promotion Strategy

An Education and Promotion Strategy has been prepared to provide a strategic framework for all education and promotion activities to support the mission of the OIC. It is available on the OIC website.

#### 1.4 Published reports on OIC activities

The regional roadshow report is available on the OIC website, as are the metropolitan roadshow progress report and the GIPA Case Management and Reporting Tool demonstration report.

#### 1.5 Communication activities

The OIC's promotional activities are based on a communications strategy that focuses on building strong links with agencies and the public, and facilitating easy communication between the OIC and its stakeholders.



Key achievements since 1 July 2010 have been to:

- develop and implement the OIC's visual identity
- establish the OIC website, enquiries email address and toll-free information line
- establish and maintain a Twitter and LinkedIn profile for the OIC, using social media to support stakeholder engagement strategies
- develop an information brochure available in 39 community languages, more than 60 000 copies of which have been distributed across the state to community centres
- establish and maintain an email update for the Information Commissioner distributed to around 1500 subscribers, up to November 2010
- institute a new monthly email newsletter (*OIC news*) from November which is currently distributed to around 2000 subscribers
- prepare a range of fact sheets, knowledge updates, presentations, templates, web buttons, staff newsletter items and other materials for agencies, the media and the public, all available at [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)
- arrange briefings for media representatives on the GIPA Act
- achieve media coverage of the activities of the OIC, including more than 50 news stories in newspapers, magazines, radio, television and blogs.

The OIC's 'promote' function is also the responsibility of the Casework and Compliance team. In the course of their regular visits to agencies, these staff promote the objects of the Act as they discuss with agencies their response to their GIPA Act obligations as well as delivering talks to agency staff.

The Information Commissioner has met with senior executives and delivered presentations to a range of audiences promoting the GIPA Act and the role of the OIC on more than 25 occasions, not including Roadshow presentations.

## **2 ASSIST**

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*This activity derives from s.17(b), (c), (d) and (e) of the Act, as follows:*

- (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 lodgement, 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),*

**2.1** In the reporting period, the Casework and Compliance team has dealt with around 350 telephone and email inquiries per month about the Act. As at December 2010, more than 90 per cent of telephone enquiries are now being dealt with on the same day and more than 80 per cent of emails are now being consistently responded to within five working days.

**2.2** New materials have been developed to explain processes under the Act. For the public this includes external review by the OIC and what to expect if consulted by agencies as a third party. These are available at: [http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/fact\\_sheet\\_external\\_review\\_by\\_ic\\_oct2010.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/fact_sheet_external_review_by_ic_oct2010.pdf)



[http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/fact\\_sheet\\_t hird\\_party\\_consultations\\_oct2010.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/fact_sheet_t hird_party_consultations_oct2010.pdf)

For agencies, we have set out what they can expect when the OIC conducts investigations and the relevant powers we may exercise. See:

[http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge\\_update\\_being\\_investigated\\_nov10.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_being_investigated_nov10.pdf)

- 2.3** The OIC is embarking on a major assessment and assistance program in 2011 as a response to issues observed in certain sectors in the first six months of operation of the GIPA Act. Commencing with NSW universities, we have invited the tertiary sector to work with us on setting up an effective program that responds to issues specific to them. The announcement of this initiative is at:
- [http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge\\_update\\_assessment\\_and\\_assistance\\_program\\_nov10.pdf](http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_assessment_and_assistance_program_nov10.pdf)
- 2.4** To respond better to the demand for compliance-related activities, the Casework and Compliance team has been restructured so that one of the two Senior Review Officers will take on a new role dedicated to compliance issues, including the assessment and assistance program. As part of this we will also conduct directed training for agencies that have faced particular challenges in their implementation of the Act. For example, in response to the challenges for NSW Police in dealing with a high volume of applications, and in order to assist improve the quality of responses to the public, we undertook a detailed consultation with the Police Information Access Unit staff, and will shortly begin directed training to address the issues that have become apparent to us through our reviews.
- 2.5** The OIC has provided advice and assistance through speaking engagements, presentations or training to the following audiences:
- FOI/Practitioners Network
  - Ministerial staff
  - Directors General and Executive teams of agencies such as the Department of Human Services, Health, Services, Technology and Administration, Housing NSW and the Department of Environment, Climate Change and Water
  - WorkCover senior management group
  - Regional Development of Australia's meeting of Chairs and Executive Officers
  - Corruption Prevention Network
  - Catchment Management Authorities business managers and board members
  - Frontline staff of government and non-government agencies such as Law Access, NSW Trustee and Guardian, Department of Education and Training TAFE Performance Unit, Environmental Defenders Office
  - Various legal firms
  - Internal auditors and ombudsmen from Sydney and regional local councils
  - Metropolitan Councils Risk Management Group
  - NSW Branch meeting of the Australian Society of Archivists
  - Journalists from Fairfax and Network Ten.

Conferences and seminars addressed have included:

- Institute of Public Administration Australia NSW (IPAA) State Conference
- Local Government Governance Network Conference
- Government Solicitors Continuing Legal Education Conference
- Local Government Managers Australia Governance Conference – “Conquering the Challenge of Change”
- The Australian Institute of Administrative Law (NSW Branch) evening seminar series
- NSW Legal Aid Civil Law Conference.

Materials on the OIC website include training modules for the public and agencies, as well as the following materials:

- *Guidelines on pecuniary interests of councillors and designated persons* (July 2010)
- *Informal release of information* (knowledge update, July 2010)
- *Good practice for creating publication guides* (knowledge update, July 2010)
- *GIPA Act fees and charges* (fact sheet, August 2010)
- *Development Applications and personal information on websites – issues for local councils* (consultation paper and summary, November 2010)
- frequently asked questions which are regularly updated

A train-the-trainer module about GIPA Act obligations has been developed for frontline staff and managers and was trialled with the NSW Trustee and Guardian in December 2010. The module can be delivered and customised for specific agencies by OIC staff or intra-agency trainers.

Further modules will be developed in 2011 for Information Access staff (to be trialled with NSW Police Information Access Unit in February 2011) and other specialist areas.

### **3 REVIEW**

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*This activity derives from s.17(f) and (g), as follows:*

- (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,*

#### **3.1 Casework and Compliance activities**

The Casework and Compliance team is primarily responsible for activities under the ‘review’ heading. A key challenge in the first six months of operation of the GIPA Act has been to build our capacity to respond to the demand for reviews of agency decisions and the level of complaint about agency processes. The team has also focused in its first six months on identifying opportunities for a proactive response to emerging issues, and to targeting specific agencies with high volumes of matters. The third dimension of the work of this team has been dealing with three specific matters that have required significant resources. The results of that effort will be published on the OIC website in the first quarter of 2011.



In terms of approaches from the public and media about access to government information, the OIC has received 154 requests for assistance over the past six months and has finalised 51 of these. The majority have been reviews of agency decisions along with a range of complaints about how agencies are responding to the Act.

The high number of GIPA applications to NSW Police noted above is reflected in matters coming to the OIC, with 25 per cent concerning police decisions.

The volume of work has been a significant challenge for the office. When the Act came into force in July, we commenced with two Review Officers. A third was recruited at the end of 2010 and a fourth commenced on 10 January 2011. We are now on track to meet our benchmarks of 60 business days for 80 percent of matters, with the remainder being settled within 120 business days.

There is significant two-way feedback between the Casework and Compliance team and OIC stakeholders. We use our assistance and review work to assist agencies best comply with the GIPA Act. We also incorporate the feedback we receive from stakeholders into our processes. For example, the special assistance, training and resources referred to above have been generated in response to concerns raised with us by agencies and the public.

### **3.2 Publication guides**

Throughout 2010, the OIC has provided feedback to agencies who sent in their publication guides, as required by s22(1) of the Act.

The publishing of a register on our website, along with a letter from the Information Commissioner on 26 November, provided an incentive for compliance, with 61 per cent of all publication guides received arriving after this date. By the end of the year we had received 300 of a possible 418 guides, comprising 72 per cent compliance. All super agencies provided their guides in time, along with 83 per cent of councils. In early 2011 we will follow up with all agencies yet to submit their guide to ensure 100 per cent compliance.

This has been a major exercise for staff with a high level of assistance provided to agencies to help them not only comply with their obligations under s.20 of the Act, but make the best use of their guides to promote the way they manage access to government information.

## **4 FEEDBACK**

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*This activity derives from s.17(h): "to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act."*

While the OIC's first annual report, tabled in October 2010, was the Commissioner's first opportunity to provide feedback to the Parliament about the GIPA Act, our second annual report will contain data from the first full year of the Act's operations. This will indicate the level at which the objectives of the Act are being achieved across the New South Wales public sector.



The 2010 – 2011 annual report will also include six months of operation of the Information and Privacy Commission, along with reports from both the Information Commissioner and the Privacy Commissioner. The ability to be able to provide in one document an overview of both access and privacy rights and how these are being respected by government agencies and experienced by citizens should prove a valuable resource.

Apart from the formal obligation under s.17(h) quoted above, the OIC actively seeks feedback about its operations and its various activities under GIPA. Two examples follow.

#### **4.1 Ongoing review and monitoring of the operation of the GIPA Act**

The OIC is presently giving consideration to a number of areas of operation of the GIPA Act, informed by our experience to date. These include:

- the categories of open access information
- the scope of Schedule 1 (conclusive presumption against of certain information)
- conducting a review of agency websites to assess how agencies are managing information to make it accessible and reusable
- examples of where GIPA and privacy legislation might overlap or present difficulties to the public
- the issue of how agencies impose charges for access to government information. As many and varied issues arise under this heading, we plan to develop a consultation document for agencies and the public to be released in April 2011.

#### **4.2 Other feedback channels to the OIC**

The OIC website provides a means for members of the public and agencies to provide feedback to us on any aspect of our work.

In the reporting period, formal feedback has been collected from 44 training sessions and other presentations delivered by OIC staff from 1177 participants. Completed feedback forms have been collected from 72 per cent of those participants, with an overall high satisfaction rate of 87 per cent.

Where we have sought specific feedback on the effectiveness of our work, for example the GIPA case management and reporting tool, we undertake to report back to participants on our response to their feedback. These reports are published on our website.

The consultation paper process encourages feedback by way of submissions on specific topics.

We also receive feedback volunteered informally by telephone and email. We record this in our issues register and consider whether the feedback presents opportunities for process improvements or for the development of new guidance materials or some other form of response.

## ISSUES FOR 2011

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### Service standards

Following a period of intense recruitment in the last quarter of 2010, the office is close to fully staffed. Using the experience of six months of complaints and review requests from the public, along with requests for advice and assistance from agencies, we are focusing our 'promote', 'assist' and 'review' activities on the priority areas that have emerged.

The key operational issue that we needed to address was to have more review staff, and that has now been achieved. While we have begun 2011 with a backlog of cases, we are now in a position to be able to meet our stated aim of 60 days to deal with and resolve 80 per cent of matters. The remainder we aim to resolve within 120 business days.

We have set the same targets for both early resolution and escalated matters, although we anticipate that matters dealt with by the early resolution team will be resolved more promptly. The new early resolution process should lead to faster outcomes for some applicants. Nevertheless, a more informal and flexible approach has its own important benefits even when it does not always result in a prompt resolution.

An overview of the process we follow can be found on our website. This explains the steps we take and the timeframes we apply.

### Challenges for the first quarter of 2011

With the creation of the Information and Privacy Commission (IPC), the Parliament has made clear that the purpose of this office will be to provide:

- consistent information and advice
- coordinated training
- a common point of contact for the public
- administrative and operational efficiencies through shared corporate services
- increased resources to the Office of the Privacy Commissioner.

These are therefore our immediate priorities.

Under the new IPC, our key deliverables in the first half of 2011 will be:

- to develop and implement a shared outreach program incorporating training and awareness-raising
- using existing OIC channels to communicate on both access and privacy matters
- to focus on providing advice and assistance on those issues where privacy and access are in tension or overlap.

In addition, at the organisational level the following areas are a key focus:

- ensuring the benefits of shared corporate services extend to the areas of IT, budget, financial services, audit and risk management, office administration and records management



- staff development and training to ensure we have the skills and capabilities to meet the needs of the IPC
- developing operational policies consistent with the new legislation.

Settling the composition and terms of reference of the new Information and Privacy Advisory Committee in consultation with the Attorney as the Minister responsible for the legislation will also be a key task.

We look forward to ensuring that the people of New South Wales and state government agencies receive the benefits of the IPC.



Deirdre O'Donnell  
**Information Commissioner**