



Being investigated by the Information and Privacy Commission NSW (IPC)

Knowledge update
November 2012

The Information Commissioner has powers under Part 3 of the *Government Information (Information Commissioner) Act 2009* (GIIC Act) to conduct investigations into how agencies fulfill their functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

What is the IPC's role in conducting investigations?

The Information and Privacy Commission NSW (IPC) conducts investigations on the Information Commissioner's behalf.

We will initiate investigations ourselves, as well as in response to matters raised with us by others.

In undertaking an investigation, we have the necessary powers to obtain information, enter premises and interview people.

When does the IPC conduct investigations?

The purpose of an investigation is to gather facts and report where we believe agencies are deliberately or purposefully ignoring their obligations under the GIPA Act, offer advice and assistance to help agencies comply with their obligations, and promote good practice.

Example:

The IPC receives a complaint that an agency has published a redacted copy of a contract worth more than \$5 million. Under the GIPA Act, contracts more than \$5 million are to be made available in full as open access information. The IPC would investigate whether the agency has contravened its open access obligations under the GIPA Act.

What can I expect as part of this investigation?

We take an informal approach. Our aim will be to conduct a thorough, expeditious and fair investigation.

Under section 15 of the GIIC Act, we have the flexibility to approach each case as we see fit. Depending on the circumstances of each individual case, we will decide how best to proceed.

If we decide to record our discussions with you, and that recording is then transcribed, you can ask for a copy. If you do, one will be provided as soon as possible after the interview.

Do I have to participate in an investigation?

Yes. You may be asked to provide all information that you know about the subject of the investigation.

You may be asked questions about specific matters or for the purposes of clarifying information you may have already provided to the investigator.

Under section 25 of the GIIC Act, we may ask you to provide a statement of information or to produce records relevant to the matter under investigation. You may also be asked to provide us with a copy of any record. You will also have the opportunity to make a statement about the matter under investigation.

The Information Commissioner has the power to enter and inspect, at any time, any premises you occupy or use, and inspect most records or anything on the premises.

Do I have to answer the questions asked or provide access to the information requested?

You must answer all questions truthfully and not mislead the investigator.

You must provide all information asked for.

You will be committing an offence under section 43 of the GIIC Act if you:

- obstruct or hinder the Commissioner;
- refuse or willfully fail to comply with any lawful requirement of the Commissioner; or willfully make a false statement, or attempt to mislead the Commissioner.

What can I expect at the end of the investigation?

Once we have concluded our investigation we will document the relevant facts, reach a conclusion based on the available evidence, and determine a suitable response in accordance with our legislation and the principles of procedural fairness.

If we anticipate making an unfavourable comment about your agency in any way, under section 23 of the GIIIC Act you will be given the opportunity to read and comment on that matter. We will consider your comments before forming a final view.

If we decide to investigate and report on the functions of your agency, section 21 of the GIIIC Act says that we must give the report to the Minister responsible for your agency, and also to your principal officer.

If an adverse comment is going to be made about your agency, the Commissioner must inform the Minister responsible for your agency and must, if requested, consult the Minister.

If the circumstances warrant, the Commissioner may at any time make a special report on any matter relating to the functions of the Commissioner to the Presiding Officers of Parliament. The Commissioner may include in such a report a recommendation that it be made public immediately.

We generally publish investigation reports on our website.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au