



**Investigation report under the
*Government Information (Information Commissioner) Act 2009***

Agency:	Barangaroo Delivery Authority
OIC reference:	11-207
Date of this report:	10 May 2012

What did we investigate?

1. We have investigated the information that the Barangaroo Delivery Authority (**BDA**) makes available on its website, and whether BDA has met its open access obligations under the *Government Information (Public Access) Act 2009 (GIPA Act)*.

Why did we investigate?

2. In 2011 we conducted an investigation into BDA in response to its release of a significantly redacted version of its Project Development Agreement with Lend Lease for the development of the Barangaroo site situated on the western side of Sydney's CBD. Our investigation found that the initial response of the BDA did not adequately respond to the requirements of sections 27-31 of the GIPA Act which provide that contracts of more than \$5 million be made available in full as open access information. The significant redactions to the contract were initially justified by BDA pursuant to the commercial in confidence provisions under section 32 of the GIPA Act but with little further explanation, as required by section 32(2) of the Act.
3. Following consultations with our office, the BDA made commendable efforts to address the issues we identified in our 2011 investigation by releasing further information, providing far more detail in the explanatory table, and providing an undertaking to conduct ongoing reviews of redactions to commercially sensitive provisions in contracts (including to release information once it became less commercially sensitive). This investigation was an example of the difficulty agencies experienced in understanding and complying with their open access obligations under the GIPA Act during the first year of operation of the Act.
4. We found that the efforts of BDA to address these shortcomings improved its response to the requirements of the GIPA Act and also demonstrated the need for agencies to think more broadly about how to comply with open access obligations. BDA's improved compliance was based on the release of further information, the provision of far more detail in the explanatory table and, significantly, an undertaking to an ongoing review of the redactions as commercial sensitivities abate over time.

5. In our investigation report, released in April 2011, we noted that we would monitor progress by the BDA in response to its open access obligations under the GIPA Act. This report sets out our findings from our review of BDA's compliance over the 12 months since we released that investigation report.

How did we investigate?

6. We conducted a review of BDA's website to examine its compliance with the open access information requirements in the GIPA Act and to ascertain whether it had proactively disclosed non-mandatory information. We also consulted with BDA about how it had responded to the issues raised in our 2011 report. We then provided a draft report to BDA on 24 April 2012 and invited it to make submissions for us to take into account before we finalised the investigation. We received BDA's submissions on 8 May 2012. Our findings and recommendations in relation to this investigation are set out in this report.
7. We assessed BDA's website against the following criteria:
 - a. compliance with the open access information obligation: checking whether BDA's open access information was available on its website;
 - b. accessibility of mandatory open access information, that is, checking how easy it is to find the open access information. This is determined by:
 - i. availability of a GIPA or right to information page
 - ii. whether the information is presented in a manner that a member of the public would find easy to locate and read, for example, whether a search engine was required to locate open access information and whether hyperlinked documents were accessible.
 - c. proactive disclosure: whether other non-mandatory information is available on the website.

What is open access information?

8. Under section 6 of the GIPA Act, agencies must make government information that is open access information publicly available free of charge. Agencies must do so by publishing open access information on their website unless doing so would impose unreasonable additional costs on the agency.
9. Open access information includes:
 - a. the agency's information guide
 - b. information about the agency contained in any document tabled in Parliament
 - c. the agency's policy documents
 - d. the agency's disclosure log of access applications
 - e. the agency's register of government contracts
 - f. the agency's 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, and

- g. any other government information prescribed by the GIPA Regulation as open access information.

What did we find?

10. We found that BDA has generally complied with the open access information requirements in the GIPA Act, and that information on its website is generally easy to find. We commend BDA for the amount of information it has disclosed. To access BDA's information, we used the website's search function, and also browsed from www.barangaroo.nsw.gov.au > *Discover Barangaroo* > *Barangaroo Delivery Authority* > *Accessing Information* and related web pages. We found BDA's search function easy to use, however we recommend that BDA include a link to its "Accessing Information" and related web pages on the main page of its website to make this information easier to find when browsing rather than searching.
11. Specific comments about each of BDA's open access information are provided below.

BDA's information guide

12. The information guide, dated April 2012, is available on BDA's website. The guide addresses the requirements in section 20 of the GIPA Act. Section 21 of the GIPA Act requires agencies to review their information guides and adopt a new guide at intervals of not more than 12 months. However, BDA has not notified the Information Commissioner that it has reviewed or adopted an amended information guide since December 2010.
13. BDA has advised us that it reviewed the guide in July 2011 and decided that no amendments were needed. Therefore, it did not adopt a new information guide nor did it notify us. BDA also advised us that the current information guide carries the date April 2012 in line with guidance from our office. We agree that BDA was not required to notify our office of the name change in April 2011, however, the requirement in section 21 of the GIPA Act is that agencies review *and adopt a new agency information guide* at intervals of not more than 12 months. This means that even if the content of the guide does not change, BDA is still required to adopt a new guide and notify our office accordingly. Now that BDA is aware of this requirement, we recommend that it do so.

Information about BDA tabled in Parliament

14. At the time of our website review, BDA had published a commitment on its website to making "available, free of charge on request, all other documents that are tabled in Parliament concerning the Authority." In its submissions, BDA advised us that the only documents that it has tabled in parliament are its annual reports. Further, it advised that there are no other documents that have been tabled in parliament concerning the Authority.
15. We recommend that BDA continue to make information about BDA contained in any document tabled in Parliament by or on behalf of BDA, other than any document tabled by order of either House of Parliament, available on its website, unless doing so would impose an unreasonable additional cost on the agency. This is a requirement under section 6 of the GIPA Act.

BDA's policy documents

16. BDA has identified and made available the following policy documents:

- a. internal audit charter
- b. privacy management plan
- c. code of conduct for board members
- d. internal audit manual
- e. best workplace practices policy
- f. public interest disclosures internal reporting policy

17. We did not review whether BDA holds other policy documents that it has not made available on its website.

BDA's disclosure log of access applications

18. BDA has published the following disclosure log on its website:

File no	Date of Decision	Information Released	Availability of Info	Contact Details to Access Info
5.8.8.2	8/10/2010	Further information in the Project Development Agreement between the Authority, Lend Lease (Millers Point) Pty Limited and Lend Lease Corporation Limited dated 5 March 2010 was released.	Available	Click here
5.8.3.5	9/12/2011	Extracts of minutes of meetings of the Barangaroo Delivery Authority Board recording discussions and resolutions in relation to the land value of the Site.	Available upon request	Information Officer info@barangaroo.com Phone: 02 9255 1700
5.8.3.5	9/12/2011	Asset Valuation of Barangaroo Development Site at 31st March 2009 prepared by the Department of Lands for the Sydney Harbour Foreshore Authority Letter dated 1 September 2010 from the Land and Property Management Authority to the Chief Financial Officer Barangaroo Delivery Authority Letter dated 30 March 2011 from the Land and Property Management Authority to the Chief Financial Officer Barangaroo Delivery Authority. <i>(Note, some figures from these valuations have been redacted as disclosure could reasonably be expected to prejudice the legitimate business, commercial and financial interests of the Authority in some cases or the developer in other cases).</i> Desktop Valuation Report of the Barangaroo site, dated 21 July 2008 by BEM Property Consultants Pty Ltd.	Available	31 March 2009 valuation September 2010 valuation 30 March 2011 valuation 21 July 2008 valuation

19. We encourage BDA to continue to publish information in its disclosure log about information released pursuant to access applications when BDA considers that the information may be of interest to the public generally.

BDA's register of government contracts

20. BDA's register of government contracts is available on its website at <http://www.barangaroo.nsw.gov.au/discover-barangaroo/barangaroo-delivery-authority/contracts-register.aspx>. The register includes information about a number of BDA contracts and consultancy agreements.
21. We reviewed the Project Development Agreement that was the subject of our 2011 investigation and note that additional information in this Agreement has now been disclosed. We expect that as the public interest considerations against disclosure abate over time, more information in this Agreement will be disclosed by BDA.
22. The BDA has stated that to ensure that it complies with its GIPA obligations it applies the following to the Development Agreement:
- a. whenever an amendment deed in respect of the Development Agreement is entered BDA considers the Development Agreement in its entirety in terms of what redacted information could be disclosed
 - b. the Development Agreement is reviewed when further information goes into the public domain
 - c. the Development Agreement is reviewed regularly to ascertain whether, by the occurrence of events, the passage of time or any other reason, redacted information can be disclosed.
23. In relation to point b. above, the BDA referred to recent publications that have led to the review of the Development Agreement: the report by the Auditor General into Barangaroo (*Government expenditure and transport planning in relation to implementing Barangaroo: Barangaroo Delivery Authority, Department of Transport, NSW Treasury*) and media releases by Lend Lease. Each of these has led to the disclosure of further information in the Agreement.
24. We recommend that BDA continue to review information in the Development Agreement and other records on its website that it has withheld from the public and release this information whenever an overriding public interest against disclosure ceases to apply.

BDA's record of the open access information that it does not make publicly available on the basis of an overriding public interest against disclosure

25. We could not find a record on BDA's website of the open access information that it does not make publicly available on the basis of an overriding public interest against disclosure. BDA has told us that this is because the only open access information that it has not disclosed due to an overriding public interest against disclosure is the redacted information from the Project Development Agreement and the Headland Park Early Works Contract. We recommend that BDA clearly identify in the "Open Access Information" section of its "Access Information" webpage the information it does not make available, as required by section 6 of the GIPA Act. BDA has suggested that it include a link to the

relevant section of its Contract Register, which describes this redacted information, and we encourage them to do so.

Proactively disclosed information

26. We also had regard to information that BDA has proactively published on its website. This information includes:

- a. consultation and research reports
- b. the progress of environmental planning applications
- c. details of events and activities at the Barangaroo site
- d. construction updates
- e. information about the Barangaroo Review commissioned in May 2011 by the Minister for Planning and Infrastructure
- f. sustainability information
- g. newsletters, fact sheets and news alerts
- h. timeline
- i. images and videos
- j. maps

27. We commend BDA for proactively disclosing this information on its website.

Recommendations

28. As set out in this report, we recommend that BDA:

- a. include an easy to use link to its “Accessing Information” and related web pages on its website to make this information easier to find when browsing
- b. adopt a new information guide and notify the Information Commissioner, as required by sections 20 to 22 of the GIPA Act
- c. continue to make documents that are tabled in Parliament concerning the Authority available on its website
- d. continue to review information in the Development Agreement and other contracts on its website that it has withheld from the public and release this information whenever an overriding public interest against disclosure ceases to apply
- e. clearly identify its record of the open access information that it does not make publicly available on the basis of an overriding public interest against disclosure

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