



office of the
information
commissioner
new south wales

The Hon Catherine Cusack MLC
Chair
Committee on the Office of the Ombudsman
and the Police Integrity Commission
Parliament
New South Wales 2000

14 July 2011

Dear Ms Cusack

I write to introduce myself to the members of the new Committee on the Office of the Ombudsman and the Police Integrity Commission, and to provide the Committee with an update on the Office of the Information Commissioner (OIC) and my activities as Information Commissioner since my last report at the end of January 2011.

I have set up a practice of providing a report every six months to assist the Committee in its role to oversight the Information 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 reports, 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, the formal merger with the Office of the Privacy Commissioner (formerly Privacy NSW) took effect on 1 January 2011, and a significant part of my work in the first part of this year has focused on ensuring the successful commencement of the Information and Privacy Commission (IPC). I have provided an overview of some IPC-related activities in this report.

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, or by email, ic@ipc.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

www.oic.nsw.gov.au

information and privacy commission nsw

ACTIVITIES OF THE OFFICE OF THE INFORMATION COMMISSIONER NSW FOR THE PERIOD 1 JANUARY – 30 JUNE 2011

Highlights for the reporting period

ENQUIRIES

- The OIC received almost 2,100 contacts from agencies and the public.
- Around 87 per cent of contacts were on the 1800 INFOCOM number.
- Eleven 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 300 (around 15 per cent) of the total.
- A further 61 per cent came from the public.
- The balance came from a range of government and private entities.
- On average we handled 15 calls per day.
- Our aim is for same-day resolution of telephone enquiries. In the past six months we achieved this for 93 per cent of calls.
- We aim to respond to emails within five working days. On average, this target was met for 77 per cent of matters.

REVIEWS AND INVESTIGATIONS

- The OIC received 205 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) during the period.
- Reviews of agency decisions totalled 173, or 84 per cent of matters received, of which 125 have been finalised.
- Complaints about how agencies are responding to the GIPA Act made up 32 or just more than 15 per cent of matters. Since January, 38 complaints have been finalised (this includes complaints carried forward from 2010).
- Our target is to handle 80 per cent of all matters within 60 business days and the rest within 120. Of the 169 reviews and complaints closed in the period, 52 per cent were closed within 60 days, 33 per cent within 120 days, and the balance (12 reviews) closed after that.
- Recruitment of additional temporary Review Officers to assist in handling the workload is underway.
- The OIC also provides submissions in relation to matters before the Administrative Decisions Tribunal (ADT). Thirty-five ADT matters were raised in the reporting period.

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.
- As at 31 December, we had received guides from 72 per cent of agencies (300 out of a possible 418).
- Earlier this year, we followed up with the remaining agencies. However, the timing of the State election and the subsequent administrative changes had an impact on this activity.
- As at 30 June 2011, we had received guides from 82 per cent of agencies (345 out of a possible 421).
- All agencies which receive material volumes of access applications were in compliance with this obligation.

COMMUNICATIONS AND OUTREACH

- Five editions of the OIC's monthly e-newsletter were distributed to 1,600 subscribers.
- The OIC website received 228,810 hits.
- More than 1,000 copies of the OIC's latest public information brochure have been sent to 21 community centres across NSW. A further 20,000 will be distributed to community legal centres, non-government agencies and through public events by July 30.
- Media releases and responses to media enquiries about the OIC, Right to Information Roadshow, OIC consultation paper and the GIPA Act have resulted in 31 news stories in newspapers, magazines, radio and television programs and online blogs.

GUIDELINES UNDER THE GIPA ACT

- The OIC issued its second guideline in March 2011, covering the provision under the GIPA Act of discounting charges on grounds of 'special benefit to the public generally'.
http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m15000112/guideline_2_discounting_charges_march11.pdf
- We reported on the feedback from local councils and members of the public to the consultation paper on personal information and development applications. Sixty-nine submissions were received overall, with 10 of those being from members of the public.
- Following that consultation, in May 2011 the OIC issued Guideline 3 to provide guidance to local councils on personal information contained in development applications and what information should be published on their websites:
http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m15000112/guideline_3_personal_info_councilwebsites_may11.pdf
- The Guideline was accompanied by a summary of the consultation responses received:
http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m15000112/oic_guideline3_summary.pdf

OVERVIEW OF ACTIVITIES

The OIC has two business teams: Policy and Good Practice and Casework and Compliance. These teams are referred to in the descriptions of the OIC's activities which follow.

PROMOTE

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 Metropolitan Roadshow

- Following the 11 regional and 10 metropolitan roadshow events in 2010, a further 10 presentations were delivered at four locations across metropolitan Sydney between 8 February and 22 March 2011.
- Three hundred and fourteen people attended, with 218 attending sessions for government agencies and 96 attending sessions for non-government agencies and members of the public.
- Feedback provided by 54 per cent of attendees gave an overall high satisfaction level of 86 per cent.
- The OIC's review of the full metropolitan roadshow from October 2010 to March 2011 over 13 locations can be found at http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/review_report_right_to_information_roadshow_metro_may_2011.pdf

1.2 Proposed seminar series

Based on the feedback and comments from the metropolitan roadshow, we plan to do a follow up series of seminars during 2011 – 12 with specific topics targeted to particular audiences.

Right to information practitioners were surveyed in June 2011 for priority or suggested topics. Fifty-seven responses were received representing 29 local councils, 14 government agencies and two state-owned corporations.

Most interest was indicated in these topics:

- applying the public interest test
- overlap between information and privacy rights
- copyright and compliance with GIPA.

The OIC plans to commence a bi-monthly seminar series in August 2011.

1.3 Community engagement

In order to develop, maintain and strengthen relationships with a diverse range of community groups, in April 2011 we recruited a Community Liaison Officer (CLO), who is available to attend community events and provide targeted and culturally appropriate education to community groups, dealing with both access and privacy rights.

Our CLO has attended 11 community events, including Sydney Homeless Connect, Seniors Expo Week, Aboriginal Information and Assistance Days and Refugee day events in various metropolitan Sydney locations.

She has also been meeting with non-government and interagency groups and networks, including multicultural and migrant workers, as well as various Koori groups. A current priority is the development of an Aboriginal action plan for the IPC.

1.4 Education and Promotion Strategy

Building on the existing OIC strategy, a new IPC Education and Promotion Strategy has been developed to provide a strategic framework for our education and promotion activities, focusing on shared outreach incorporating training and awareness-raising on both access and privacy rights. This is available at http://www.oic.nsw.gov.au/agdbasev7wr/_assets/oic/m15000112/oic_education_and_promotion_strategy_1_02_11.pdf.

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. That approach has now been expanded to cover the Office of the Privacy Commissioner (Privacy), together with the merged Information and Privacy Commission.

Key achievements in 2011 have been to:

- develop and implement the visual identity for the IPC and Privacy
- establish the IPC website, enquiries email address and toll-free information line
- maintain a Twitter profile for the OIC, using social media to support stakeholder engagement strategies
- develop a revised information brochure for distribution across the state to community centres
- distribute the OIC's electronic newsletter to around 1,600 subscribers
- communicate emerging issues regarding GIPA and agency compliance to stakeholders through the distribution of regular e-alerts to agency contacts
- stage an IPC display at National Law Week, featuring information for the public, legal sector and agency staff on the role of the IPC, OIC and Privacy and material relating to information access and privacy legislation
- achieve media coverage of the activities of the IPC, OIC and Privacy including around 70 news stories in newspapers, magazines, radio, television and blogs
- produce IPC-branded materials for distribution to members of the public, non-government organisations and agency staff to support participation in community events.

ASSIST

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),*

Since January, our Information and Assistance Officers have dealt with around 350 telephone and email inquiries per month about the GIPA Act, totalling more than 2,100 calls and emails. Our aim is for same-day resolution of telephone enquiries, and in the past six months that was achieved for 93 per cent of calls. Our target for email enquiries is to respond within five working days. This target was met for 77 per cent of emails.

Guidelines under the GIPA Act

- The OIC issued its second guideline in March 2011, covering the provision under the GIPA Act of discounting charges on grounds of ‘special benefit to the public generally’.
http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/guideline_2_discounting_charges_march11.pdf
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- Following that consultation, in May 2011 the OIC issued Guideline 3 to provide guidance to local councils on personal information contained in development applications and what information should be published on council websites:
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- The Guideline was accompanied by a summary of the consultation responses received:
http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/oic_guideline3_summary.pdf

The OIC has provided advice and assistance through speaking engagements, presentations or training to the following audiences:

- Administrative Decisions Tribunal (registry staff)
- Legal Aid (social workers)
- Homeless Persons Legal Service
- Public Interest Advocacy Centre
- Multicultural Disability Advocacy Association
- Koori Men’s Group
- Browns Nurses (an agency dedicated to working with elderly homeless people in the Sydney area)
- various legal forums and community legal centres.

Conferences and seminars addressed included:

- Complaint Handlers’ Information Sharing and Liaison (CHISal) seminars
- 2nd Annual Citizen Centric Service Delivery Conference, Canberra
- the Institute of Internal Auditors’ South Pacific Asian Conference: “FOI reinvented – how it will change information controls”, Melbourne
- Recordkeeping Roundtable & NSW Branch of the Australian Society of Archivists panel discussion on the impact of WikiLeaks on the

archives/records profession: “After WikiLeaks, is it all over for the Archives”

- the Australian Government Solicitor’s National Information Law Conference, Canberra
- Local Government Managers Australia (LGMA) NSW Governance Gathering, Hunter Valley
- NSW Records Management Association of Australasia, Local Government Chapter, Kiama
- the Consumer Forum of the Agency for Clinical Innovation.

The OIC continues to participate in the regular meetings of the Right to Information/Privacy Practitioners Network.

2.4 Knowledge updates and other publications

- A ‘Fees and charges’ fact sheet was published in February to explain the potential costs (including waiver, reduction and refund provisions) associated with accessing information under the GIPA Act:
http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_copyright_and%20compliance_april2011.pdf
- The open access information fact sheet released in March provides a guide to the mandatory information agencies must make available and assists members of the public understand their right to accessing this information.
- Our ‘What is an agency’ knowledge update was amended following the March 2011 State election to reflect the significant reorganisation of government departments.
- In April 2011 we released a knowledge update about copyright and compliance with the GIPA Act. We had sought legal advice about copyright to help clarify the complex and challenging issues facing local councils in releasing copyright information in accordance with the GIPA Act.
- The knowledge update on copyright was accompanied by frequently asked questions to assist local councils interpret the copyright principles:
http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/knowledge_update_copyright_faqs_may2011.pdf
- In May we published a knowledge update outlining good practice for agencies creating disclosure logs under section 25 of the GIPA Act.

The OIC is currently developing, in consultation with the acting Privacy Commissioner, a fact sheet about the overlap between the GIPA Act and the *Health Records and Information Privacy Act 2002*.

2.5 Agency workshops on the GIPA Act

Half day in-house training modules were customised and delivered for:

- NSW Police, Information Access Unit
- Anti-Discrimination Board (all staff).

2.6 GIPA case management and reporting tool

One hundred and forty-two agencies are now registered for access to the GIPA case management and reporting tool to manage their formal access applications and assist with annual reporting requirements.

A second series of demonstration sessions was held in the reporting period to support the release of version 2b of the GIPA reporting tool. There were 74 attendees at 14 demonstrations, with sessions being held in both Sydney CBD and Parramatta. An overall 96 per cent high satisfaction rating was reported for the sessions. Attendees represented participants from 13 NSW government agencies, 11 local councils and 11 non-government organisations. Eighty-five per cent of attendees identified their work as directly involving formal access applications.

Of the 26 suggested enhancements or improvements to the GIPA reporting tool made by participants during the demonstration sessions, 17 are being followed up by the OIC for implementation.

We continue to monitor feedback on the GIPA reporting tool and report on its development in response to agency feedback and our own analysis on a six-monthly basis. A report following the April 2011 demonstration sessions is available on our website at

http://www.oic.nsw.gov.au/agdbasev7wr/assets/oic/m15000112/gipa_tool_demonstration_report_may_11final_edit.pdf.

We have responded to 51 enquiries by telephone or email to provide direct assistance in the use of the GIPA reporting tool.

REVIEW

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. During the reporting period, the team opened 205 files and closed 165, not including matters with the Administrative Decisions Tribunal (ADT).

The OIC commenced 2011 with a backlog of matters to deal with, having received 160 up to December 2010, while closing just 52. The reasons for this and the remedial steps we planned to take were outlined in my previous report to the Committee.

The current reporting period has seen an improvement in turn-around times reflecting improved internal procedures, an increase in staff and greater experience in dealing with the GIPA Act.

Of the 172 open matters, 12 are from 2010 that are all in their final stages. While these matters have taken longer than our targeted time frame, which is 60 business days to deal with and resolve 80 per cent of matters, and the

remainder within 120 days, some of the delays have been for reasons such as:

- the agency disbanded, causing delays in dealing with our request for the file;
- the agency 'lost' the information sought;
- a later request concerning the same matter came in from the same applicant so the requests were combined for a better overall outcome (this is a not unusual occurrence);
- we required extra work be done on some very poor decisions, choosing to invest in getting a better outcome that may take longer but which should reduce the need for further action by the applicant and improve the processes of the agency.

For the reporting period, 52 per cent of complaints and reviews were completed within 60 business days (compared to our target of 80 percent). A further 33 percent were closed in under 120 business days, leaving 15 per cent to take longer than our target of having all matters resolved within 120 days.

With additional staff to deal with matters and improved internal processes, I expect to see an improvement in our performance against these targets in the next six months.

It is worth noting that the OIC was initially funded and staffed to meet a predicted demand of 1,000 enquiries, 10 agency audits, 100 reviews and 100 investigations. The first year of operations of GIPA have now yielded meaningful data that has assisted our evaluation of the appropriate allocation of staff and the development of efficient business processes, leading to improvements in our timeliness and the quality of our casework.

In addition to our case load, we have 29 open matters at the ADT, where the Information Commissioner has a right to appear and be heard (s.104(1) of the GIPA Act). Our Principal Review Officer has carriage of most of these, and has provided comprehensive submissions to the Tribunal which have gone on the OIC's website at <http://www.oic.nsw.gov.au/review/oicreview/submissions.html>.

Three major investigations have been finalised in the past six months. Reports on investigation into complaints against Macquarie University and the Barangaroo Delivery Authority are on the OIC website at <http://www.oic.nsw.gov.au/review/oicreview/decisions.html>. We also finalised a major report on the NSW Police Force's compliance with the GIPA Act. This was coupled with targeted training of the agency. We plan to publish that report shortly.

3.2 Future compliance monitoring

Commencing in the new financial year, a compliance program will be initiated that includes the following activities:

- reviewing agency websites to monitor compliance with open access information provisions and to identify best practice
- reviewing agency annual reports to ensure compliance with the reporting requirements under the GIPA Regulation

- reviewing publication guides.

As part of this program the OIC has commenced writing to heads of departments, universities, state owned corporations and Ministers to remind all 'agencies' under the GIPA Act of their responsibilities under the Act and to advise of the OIC's compliance monitoring program.

The website reviews will commence in July 2011 and the entire compliance program is expected to take six months. The information gathered from this compliance program will inform the report by the OIC to Parliament on the operation of the GIPA Act, including performance of agencies in accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*.

3.3 Publication guides

Since 1 January 2011, the OIC has continued to provide feedback to agencies who sent in their publication guides, as required by section 22(1) of the GIPA Act.

The State election and subsequent reorganisation of principal departments impacted the publication guides of some agencies who had still not finalised theirs in line with the 31 December 2010 timeframe. By 30 June 2011, we received a further 45 publication guides, which meant a total compliance rate of 82 per cent.

To assist agencies that had not met their obligations, and to provide some certainty in terms of the OIC's annual review of publication guides, we nominated a date of 31 July as the annual date for this review going forward, so that all agencies could work to ensure compliance with this section of the Act.

Nominating this annual date will also mean that members of the public can be confident that when they look at any website of a state government agency, local council or public authority after 31 July each year, that website should contain up to date and useful information, consistent with the spirit of the GIPA Act. This will form the basis of future monitoring by the OIC.

Twenty-four agencies have since notified the OIC that they had reviewed their publication guide for 2011.

FEEDBACK

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."

The OIC gave feedback to the Attorney-General's Department in March 2011 recommending some amendments to the GIPA Act. We will continue to liaise with the department and provide feedback about the operations of the Act.

The first annual report for the Information and Privacy Commission is currently being prepared for 2010 – 2011. It will include a report on the six months of operation of the IPC, along with reports from both the Information Commissioner and the Privacy Commissioner on our respective legislation.

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

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

The OIC is currently:

- reviewing agency websites to assess compliance with open access information and identifying best practice
- reviewing agency websites to measure the number of agencies who proactively release information
- identifying examples of where GIPA and privacy legislation might overlap or present difficulties to the public and developing fact sheets and knowledge updates to clarify areas of overlap
- rolling out an extensive consultation to explore the issue of how agencies impose charges for access to government information. A consultation paper has been drafted and will be released in July 2011.

4.2 Other feedback channels to the OIC

In the reporting period, formal feedback has been collected from 14 training sessions and other presentations delivered by the OIC to 373 participants. Completed feedback forms provided an overall high satisfaction rate of 87 per cent.

Where we seek specific feedback on the effectiveness of our work, such as the metropolitan Right to Information Roadshows and the GIPA case management and reporting tool, we undertake to report on our response to participants' feedback. These reports are published on our website.

PRIORITIES FOR THE SECOND HALF OF 2011

Following 12 months of operation of the GIPA Act, we are looking forward to receiving agency data in accordance with their annual reporting obligations. I will report on our analysis of that data and what it means for our priorities in our annual report.

Our business planning process for the 2011 – 2012 year will allow us to formalise our revised mandate as the Information and Privacy Commission, where the focus of the office must extend to include the outcomes outlined by the NSW Parliament, namely:

- 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.

The activities we have undertaken to achieve these outcomes will be detailed in the first IPC Annual Report, which will be submitted to Parliament later this year.

Deirdre O'Donnell
Information Commissioner