



Checklist

Updated August 2020

Unreasonable and substantial diversion of resources

The purpose of this checklist is to assist agencies with the process for advising and consulting with an access applicant where the Agency forms a view that the access application is potentially an unreasonable and substantial diversion of resources.

GIPA Act reference	Issues/Actions/Questions	Status	Comments
<i>Application received</i>			
Section 41 Section 16 Section 51 Section 51A	Is the access application valid?	<input type="checkbox"/> YES <input type="checkbox"/> NO	If application is not valid the agency should advise the applicant it is not valid, including reasons and identify or assist to make the application a valid application.
	Has the application been acknowledged?	<input type="checkbox"/> YES <input type="checkbox"/> NO	An agency's decision on the validity of an access application must be provided to the applicant as soon as practicable and within five days of the receipt of the access application (section 51(2)) It may be appropriate when acknowledging the application to discuss the scope of the request with the applicant with the aim of clarifying the request, if on first consideration the application appears very wide.
<i>Obtaining the information to inform the request being potentially too wide</i>			
Section 53	Have searches been undertaken to look for information captured by the request?	<input type="checkbox"/> YES <input type="checkbox"/> NO	An agency needs to show what informed the assessment that the request may be potentially too wide and this step will assist in informing how the scope of the application could be amended. For more information see IPC Fact Sheet: Reasonable searches under the GIPA Act . If no searches have been undertaken, the agency needs to be able to explain how they have conducted the assessment process and to show how it is that a view may be formed that the application is potentially too wide.

GIPA Act reference	Issues/Actions/Questions	Status	Comments
Assessment of the application on breadth and size of the request			
Section 60(1)(a) Section 60(2) Section 60(3)	Has the applicant made two or more related applications for this information previously or has another person or persons made applications in concert in connection with those applications	<input type="checkbox"/> YES <input type="checkbox"/> NO	If there are a number of applications for the same or related information by the applicant or by another person or persons acting in concert in connection with that application the agency is entitled to consider this as part of the assessment of whether the application may be an unreasonable and substantial diversion of resources (section 60(3)). If the applicant has agreed to an extension of time for dealing with the access application this is not to be taken into consideration when looking at the assessment of whether dealing with the access application would require an unreasonable and substantial diversion of resources (section 60(2)).
	Does the application seek information over several years/ several dates	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Would a smaller date range be manageable?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Is the application itemised or organised with several items of information sought Can this be grouped together, narrowed or dealt with in stages by agreement?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Is any of the information sought publicly available?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Has the applicant provided any file references to assist in locating the information?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Can the application be reduced by not providing information that the access applicant has provided to the agency?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Does the application seek personal information of third parties?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Can third party information be excluded?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
	Are there any suggestions that may assist an applicant to narrow the request which may help the applicant in identifying the most important information and narrowing the scope? For example: Can some of the information be released to the applicant informally? What is the question the applicant wants answered from the information? Is some information already available?	<input type="checkbox"/> YES <input type="checkbox"/> NO	

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<p>Have the following considerations been taken into account when deciding whether dealing with an application would require an unreasonable and substantial diversion of resources?</p>			
<p>Section 60 (3A)</p>	<p>The estimated volume of information involved in the request</p> <p>The agency's size and resources</p> <p>The decision period under section 57</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>Where an agency takes into account a consideration listed in section 60(3A) in deciding that an application involves an unreasonable and substantial diversion of resources, the consideration taken into account must on balance outweigh:</p> <ul style="list-style-type: none"> a) the general public interest in favour of the disclosure of government information, and b) the demonstrable importance of the information to the applicant, including whether the information: <ul style="list-style-type: none"> i) is personal information that relates to the applicant, or ii) could assist the applicant in exercising any rights under any Act or law. <p>(Section 60(3B))</p>
<p style="text-align: center;">Request to applicant to amend scope</p>			
<p>Section 60(4)</p>	<p>Approaching applicant on amending the scope</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>What needs to be amended in an application will depend on the information sought and the reasons identified that the application request is an unreasonable and substantial diversion of resources.</p> <p>Agencies can assist an applicant in reducing the scope of an application or reframing an application by providing some guidance on the relevant types of information the agency holds and how the agency's records are kept.</p> <p>Agency Information Guides can also assist an applicant in understanding the information an agency made hold. For more information see IPC Guideline 6: Agency Information Guides.</p> <p>Keep a record of any discussions with the applicant about the scope of the application.</p> <p>In approaching the applicant about the scope of the access application the agency should include a timeframe for the applicant to respond to that request.</p> <p>Note the period for which an application is to be decided stops running while the applicant is given an opportunity to amend the application. (Section 60(4)).</p>
	<p>Has the applicant agreed to amend scope?</p>	<p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	

GIPA Act reference	Issues/Actions/Questions	Status	Comments
Actions following opportunity to amend application			
Section 60(5) Section 60(6)	Did the applicant amend the scope?	<input type="checkbox"/> YES <input type="checkbox"/> NO	<p>If the scope was amended then confirm new scope in writing with the applicant and include the new decision date so that the applicant is informed when he/she may expect the decision by the agency and then continue to deal with the access application.</p> <p>If the scope of the application was not amended then confirm this in writing with the applicant including in the notification the reasons for refusal as required by section 60(5) and take action as appropriate.</p> <p>If the agency decides to refuse to deal with the application, the applicant is not entitled to a refund of the application fee (section 60(6)).</p>

General comments

There is a positive duty on agencies to provide assistance to applicants (section 16 GIPA Act).

Prompt communication to clarify the scope of an access application will facilitate an understanding of what information is being sought and how best the agency can assist the applicant to obtain that information unless there is an overriding public interest consideration against the disclosure of the information.

Applicants may not be sure how to explain what information they seek or may not be familiar with agency record keeping practices. Discussion with the applicant may help them to articulate the particular information they seek access to, and information they do not need.

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

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.