



## Creating new records under the GIPA Act

This fact sheet aims to provide guidance on the creation of a new record under section 75 of the *Government Information (Public Access) Act 2009* (GIPA Act).

When a person makes a valid access application for government information, agencies are required to undertake reasonable searches to find the information.<sup>1</sup>

In most situations, an agency will find the information applied for and consider its release in its existing form. However, circumstances may arise where the information found in its existing form is not sufficient to address the access application or the agency considers that it may be subject to an overriding public interest against disclosure.

In these situations, the GIPA Act allows agencies to create a new record in order to facilitate the disclosure of information.<sup>2</sup>

In an environment of digital government, records that are stored digitally require some treatment to bring them into existence, for example, a request for emails if then produced as word documents or hard copy will require some treatment. Therefore, agencies should think practically about the impact of digital government on the right to access information and apply the discretions under the GIPA Act in a manner that promotes the object of the GIPA Act – to provide access to information.

### When is a new record not created?

An agency should consider performing the following actions if it assists in the release of information to a person.

However, a new record will **not** be created when a record is:

- edited by deletion pursuant to section 74 of the GIPA Act;
- a written transcript of information recorded in audio, shorthand or other encoded format;
- converted through a photocopy or scan process;
- converted into a different electronic file format (e.g. word file to pdf); or

- produced by collating information held electronically from different areas using a standard reporting capability function available to the agency.

Consider the following examples that do not create a new record:

- an agency redacts information from a record because of client legal privilege; or
- an agency runs a standard report extracting and compiling information from separate databases or data sets into one document.

### Promoting information release

If the most appropriate way to release the information is by creating a new record, the agency should consider creating the new record, because this is consistent with the object of the GIPA Act.

The GIPA Act provides that an agency may create a new record but is not obliged to do so.<sup>3</sup>

However, an agency is not required to create a new record in situations where the creation would:

- unreasonably interfere with the operations of the agency; or
- result in the agency incurring unreasonable additional costs.

For example, an agency is not required to update, make calculations or draw inferences from the information held by the agency in order to produce a new record.<sup>4</sup>

### When is a new record created?

A new record will be created when a record is:

- edited and the body of information is changed;
- produced by collating information held in different electronic folders or systems;
- converted following non-standard processes such as generating non-standard reports;
- produced by applying new software that is not usually available to the agency; or
- produced by applying additional resources that are not generally available to the agency.

<sup>1</sup> GIPA Act section 52(2)

<sup>2</sup> GIPA Act section 75(1); *Miskelly v Secretary, Department of Education* [2019] NSWCATAD 48 at [12]

<sup>3</sup> GIPA Act section 75(1)-(2)

<sup>4</sup> GIPA Act section 75(2)(c)

Consider the following examples:

- inserting further text into the record in order to clarify the meaning;
- applying resources not usually applied in order to convert information;
- designing and building a new function within a system in order to generate a report that extracts and collates information from separate databases; or
- applying additional staffing resources to perform the task of collating information held electronically in different areas.

An agency may create a new record through these actions but is not obliged or compelled to do so.

### Disclosing the new record?

In determining a request for information, agencies will consider the presumption in favour of disclosure and balance the considerations in favour of disclosure together with the factors against disclosure. This process will be undertaken prior to considering the creation of a new record.

When an agency has created the new record, it must then confirm whether it is still appropriate to release that new record to the person by applying the public interest test.

Unless there is an overriding public interest against disclosure, generally agencies must provide the information to the person.

Further information on the public interest test is available in our fact sheet [What is the public interest test?](#)

### How does record creation fit into the GIPA framework?

It is important for agencies to understand how record creation forms a part of the information disclosure framework, and how it assists to promote the release of government information by agencies.

A flow chart has been developed to summarise the concepts discussed in this fact sheet. Agencies should carefully consider the issues arising at each stage of the disclosure process.

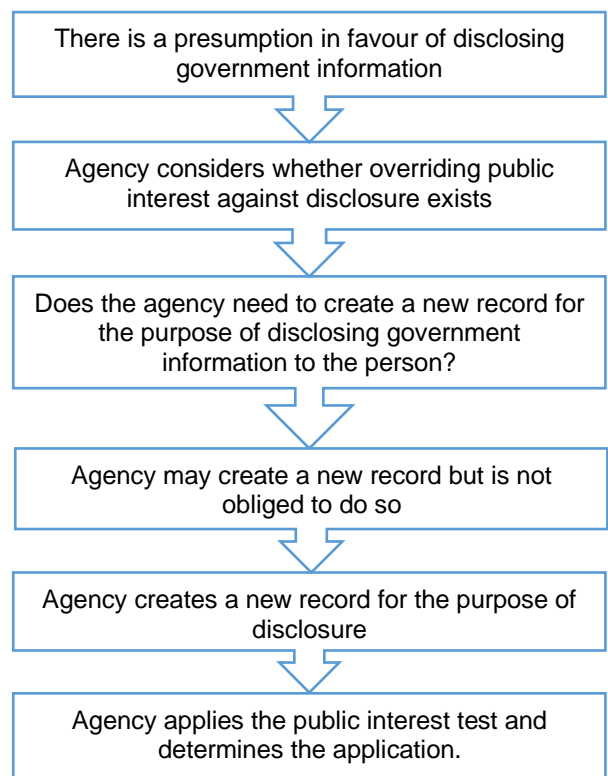
Agencies should be aware that they can provide access to information that was not requested by the applicant.

### Can I seek review if the agency refuses to provide access to information or decides that information is not held by the agency?

Yes, if the agency has decided not to provide access to information or that the information you have applied for is not held by the agency, the agency has made a reviewable decision.<sup>5</sup>

In the case of review by the Information Commissioner, the Commissioner may have regard to creation of a new record in reviewing and making recommendations to agencies.

Further information is available in IPC Fact Sheet: [Your review rights under the GIPA Act](#).



#### For more information

Contact the Information and Privacy Commission NSW (IPC):

- Freecall:** 1800 472 679  
**Email:** [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
**Website:** [www.ipc.nsw.gov.au](http://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.*

<sup>5</sup> GIPA Act section 80(e); see, also *Amos v Central Coast Council* [2018] NSWCATAD 101 where the Tribunal determined

that it has the power to review an explicit or implied decision under s. 80(e) that information is not held