



information
and privacy
commission
new south wales

NSW Police Force

GIPA Act compliance report – April 2019



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Abbreviations

The following table lists the commonly used abbreviations within this report.

Accronym or abbreviation	Explanation
AAMS	Access Application Management System
COPIAD	Conclusive presumption of an overriding public interest against disclosure
GIIC Act	<i>Government Information (Information Commissioner) Act 2009</i>
GIPA Act	<i>Government Information (Public Access) Act 2009</i>
IPC	Information and Privacy Commission
NSWPF	NSW Police Force
OPIAD	Overriding public interest against disclosure
PAC	Police Area Command
PD	Police District
PPG	Police Properties Group
SOP	Standard Operating Procedure

1 Purpose

This audit examines the systems and processes of the NSW Police Force (NSWPF) in relation to dealing with applications for access to information under the [Government Information \(Public Access\) Act 2009](#) (GIPA Act).

The audit was undertaken in accordance with section 21 of the [Government Information \(Information Commissioner\) Act 2009](#) (GIIC Act). Section 21 of the GIIC Act provides that the Information Commissioner may investigate and report on the exercise of any function by an agency under an Information Act including the systems, policies and practices of that agency. The Information Commissioner's reporting requirements are provided for in section 21(2) of the GIIC Act. Additionally, section 24 of the GIIC Act is also relevant to the Information Commissioner's reporting functions in circumstances where the Information Commissioner finds any conduct of an agency the subject of an investigation is conduct that constitutes a failure to exercise its functions properly in accordance with any provision of an Information Act.

Section 17(g) of the GIPA Act recognises the Information Commissioner's role in monitoring, auditing and reporting on the exercise by agencies of their functions under, and in compliance with, the GIPA Act.

Accordingly, the purpose of the audit was to assess the compliance of the NSWPF with the GIPA Act in fulfilling its responsibilities under Part 2, Part 4, Part 5 and Part 7 of the GIPA Act. This audit was limited to the specific management of the formal access application process under the GIPA Act and did not consider all compliance requirements under the GIPA Act. Specifically, this report assessed compliance with Part 2, Division 3 – Assistance and oversight; Part 4, Division 3 – Process for dealing with access applications; Part 4, Division 4 – Deciding access applications; Part 5, Division 2 – Internal review by agency; Part 5, Division 3 – Review by Information Commissioner; and Part 7 – Miscellaneous – requirements for notices given by agencies.

The audit considered:

- processes to assist decision making including timeliness and responses to search requests;
- case management processes including templates and information to assist staff when processing access applications;
- the general conduct of internal reviews;
- training and guidance for officers undertaking GIPA Act functions;
- the processes to support agency review following recommendations by the Information Commissioner; and
- processes to assist citizens seeking information under the GIPA Act.

2 Background

In October 2018, the Information and Privacy Commission (IPC) identified a number of concerns in relation to NSWPF's handling of access applications and regulatory engagement to facilitate compliance with the GIPA Act. Germane to these compliance issues were concerns surrounding the timely provision of information requested by the IPC in order to conduct external reviews, the standard and quality of decisions made, decisions which appear to be made in the absence of a review of the requested information, compliance with the requirements of section 126 of the GIPA Act regarding the provision of notices and the approach taken regarding internal reviews pursuant to section 84 of the GIPA Act.

Systemic Issues

In forming a view that further consideration of the NSWPF systems, policies and practices was required, the IPC also had regard to the NSWPF GIPA dashboard which highlighted access application performance as follows:

- the number of applications decided within the statutory timeframe declined from 94% in 2015/16 to 84% in 2016/17
- the number of requests for internal reviews was significantly above the sector average in 2016 - 2017 at 55% compared to 37% across the government sector
- the percentage of reviews where the decision was upheld declined significantly from 43% in 2015/16 to 24% in 2016/17
- the overall release rate in 2016/17 was 67% compared to the government sector average of 73%.

Individual complaint

At the time of the proposed audit the IPC was in receipt of a complaint by a member of the NSW Parliament which also highlighted concerns with the conduct of NSWPF's exercise of information access functions. Relevant to the audit the complaint highlighted concern with the timeliness for processing an access application and communication by the NSWPF with the applicant regarding the status and progress of the access application.

The complaint informed the conduct of the IPC audit. However, some issues raised were unique to that complaint. Accordingly a separate report has been provided to the complainant and NSWPF in accordance with section 19(1)(a) of the GIIC Act regarding this complaint. Chapter 5 deals with this complaint. For the purposes of publication of the final audit report the IPC removed identifying information relevant to the individual complainant.

Conduct of the audit and prior regulatory reports

In conducting the audit, representatives of the IPC met with representatives of the NSWPF, and assessed the NSWPF's systems and processes for dealing with access applications under the GIPA Act.

Since the introduction of the GIPA Act and associated reporting requirements NSWPF has been identified as the highest volume GIPA environment. NSWPF has, year on year received the most applications of any government sector agency. Accordingly, the performance of NSWPF significantly influences the GIPA performance outcomes of the government sector in New South Wales (NSW). This places NSWPF in a position of influence and presents an opportunity for committed leadership focused on achieving compliance.

In 2011 the IPC conducted a compliance assessment of the NSWPF (Chapter 9). The subsequent 2011 Compliance Report identified compliance risks including the:

- quality of the decisions;
- conduct of searches;
- quality of record keeping; and
- appropriate levels of staffing.

Recommendations contained in that Report were aimed at elevating NSWPF compliance with statutory requirements.

Significantly, there is consistency between the compliance risks identified in the 2011 Compliance Report and those highlighted in this audit. This consistency brings into question the sustainability of implementation of any of the operational and systemic change recommended in the 2011 Compliance Report to assist NSWPF in compliance with GIPA Act responsibilities.

Recently, a willingness to comprehensively address and improve information access systems has been demonstrated by NSWPF. In October 2018 the IPC received advice from NSWPF regarding its intention to establish a mechanism to examine other GIPA access pathways including proactive release to promote access to information. The Information Commissioner was invited to contribute to this examination. This initiative presents the possibility for transformational change of information access systems within NSWPF and is commended.

However, this report is properly informed by NSWPF's compliance history together with point in time data and analysis. At the time of the audit, NSWPF was in the process of developing new policies and procedures to improve the systems, policies and practices that support the exercise of GIPA Act functions. Significantly, NSWPF were also implementing a new business unit structure with recruitment underway to staff the positions allocated to perform GIPA Act functions under delegation of the principal officer, the NSW Police Commissioner.

The IPC appreciates the assistance and co-operation provided by the NSWPF and its representatives during the audit.

This report outlines the audit findings and proposed recommendations.

The NSWPF provided a preliminary response to the draft report on 15 March 2019, and provided its final response to the draft report on 22 March 2019. NSWPF's response supported the recommendations made by the Information Commissioner in her report. Further NSWPF advised it had commenced implementation of the recommendations and will continue to report on the progress of continued implementation. This response has informed the finalisation of the report.

This report was also provided to the Minister for Police in accordance with section 24 of the GIIC Act.

The recommendations made in this report traverse operational and strategic issues, in particular leadership to assist NSWPF in achieving compliance. The IPC will work with NSWPF and monitor its progress through the provision of quarterly reporting by NSWPF commencing 1 May 2019 to assist in their implementation of the recommendations contained in this report.

3 Methodology

3.1 Sample selection

In addition to an assessment of NSWPF's overall performance in managing GIPA applications using annual reports, IPC compliance data and the NSWPF agency dashboard the IPC attended the offices of the NSWPF, and was provided access to the NSWPF's GIPA files and relevant representatives.

The IPC audited a random sample of access applications decided by NSWPF in the period from July 2017 to November 2018. The sample also included decisions made on internal review.

A total of 65 files were reviewed (including the access application file subject of the individual complaint). The audited files included access applications and applications for internal review. The sample number should be viewed in the context of the number of access applications received by NSWPF which for the period 2016/17 was 6063 access applications.¹ The number of valid access applications received by NSWPF for the period of 2017/2018 was similarly consistent at 6035.

The number of valid access applications received by all agencies for the period of 2017/2018 was 15 918. Accordingly, NSWPF represents approximately 38%² of all GIPA applications.

NSWPF also supplied data to the IPC, arising from the audit, in relation to the conduct of internal reviews during 2018. Data relevant to 70 files was provided. The methodology applied recognises that internal review files may form a subset of the audited files. For this reason those 70 files are reported separately against relevant criteria.

The data and audited files predated the legislative amendments to the GIPA Act which were assented to on 28 November 2018. Accordingly, any recommendations made in the context of this report, should be considered against the requirements of any legislative amendments which may be effective since 28 November 2018.

During the course of this audit, the NSWPF provided additional data concerning the timeframes relevant to its processing of GIPA access applications. However for the purposes of this audit the IPC relied on the sample data it assessed during the desktop audit to inform its findings.

3.2 Assessment criteria

The IPC assessed NSWPF's compliance with the GIPA Act against discrete criteria to reflect the issues identified. The criteria are set out in the table below.

Assessment criteria
GIPA delegations
GIPA applications manual
GIPA templates
GIPA search requirements
GIPA case management

¹ <https://www.ipc.nsw.gov.au/agency-level-gipa-dashboard>

² <https://www.ipc.nsw.gov.au/agency-level-gipa-dashboard>

Scope and assistance
Decision making
Training and guidance
Internal reviews
Process following recommendations from Information Commissioner

3.3 Conduct of analysis

The findings of the review are presented in two parts:

- assessment against select criteria that assist examination of NSWPF compliance with legislated requirements. The results of individual audit assessments provide objective findings and in some instances inform further findings or commentary.
- specific comments, findings and recommendations to assist NSWPF with compliance with legislated requirements.

The IPC recorded and retained data in relation to each of the sample files, and for the purposes of this report deems it unnecessary to provide a breakdown of each file as the findings and recommendations are applicable generally and not specifically.

4 Findings

4.1 GIPA delegations

Criterion	Result
a Documented GIPA delegations are in place	Delegations present

Comments, findings and recommendations

Comment: Section 9(3) of the GIPA Act provides that a reviewable decision may only be made by, or with the authority of, the principal officer of the agency.

Finding: NSWPF have an instrument of authorisation dated August 2018.

Comment: NSWPF advise that this instrument will be updated to reflect newly created positions in the PoliceLink Command - InfoLink Unit in due course.

Recommendation 1: NSWPF ensure that the delegation instrument is updated to reflect any new positions responsible for exercising functions under the GIPA Act within 4 weeks of the commencement of the newly created positions.

Recommendation 2: NSWPF circulate a copy of the delegation instrument to all staff within the PoliceLink Command – InfoLink Unit on commencement of employment and at any time in which the delegation instrument is updated, and also ensure the location of the instrument is communicated to all staff within the PoliceLink Command - InfoLink Unit.

4.2 GIPA applications manual

While a manual on how to manage access applications is not a legislative requirement, agencies often have documentation in place in the form of policies and procedures. A manual is beneficial to agencies to support the effective exercise of GIPA functions, and provides a useful reference for staff when receiving, processing or deciding access applications. Maintaining currency of policies and procedures assists staff in the exercise of their GIPA functions on behalf of the principal officer.

Criterion	Result
a Status of GIPA applications manual	Current Standard Operating Procedures (SOP) in place. Improvements required.

Comments, findings and recommendations

Comment: NSWPF have advised that new SOPs are currently in development and will be completed in 2019. It is anticipated that the new SOPs will provide guidance to staff when processing access applications, including internal review applications and recommendations from the IPC. The new SOPs include hyperlinked sections allowing for easier navigation throughout the SOPs. The SOPs will undergo revision and amendment as required.

Finding: Currently the draft SOPs and the website specifies a requirement that for an access application to be valid it requires a postal address in Australia. Section 41 of the GIPA Act states that only an email or postal address is required.

Recommendation 3: NSWPF prioritise completion of the SOP dealing with valid applications by 30 April 2019. This should include the delivery of internal training to ensure common understanding of the application of the SOP.

Recommendation 4: NSWPF remove the requirement (as currently outlined on the website and in the draft SOPs) that for an access application to be valid it requires a postal address in Australia. In reviewing these requirements, NSWPF should also consider the effect of any legislative amendments which came into effect on and from 28 November 2018. This should be completed by 12 April 2019.

4.3 GIPA templates

The IPC website and GIPA tool contain template letters, access applications and notices of decision. These templates are designed to provide a basis for customisation by agencies to respond to specific issues.

Criterion	Result
a Communication with applicant	Template in place
b Notice of decision	Template in place

Comments, findings and recommendations

Comment: Section 126 of the GIPA Act, sets out the requirements for any notice that is required to be given under the GIPA Act, and is not limited to only the Notice of Decision. Section 126(1)(d) of the GIPA Act requires an agency to give the contact details of an officer of the agency to whom inquiries can be directed in connection with the agency's decision or other action relevant to the notification. The provision of contact details enables an applicant to seek relevant information about their access application as necessary.

Finding: NSWPF have some templates for formal communication with applicants, for example, notice regarding the validity of the access application, correspondence regarding the extensions to the timeframe to decide an access application and notices of decision. These templates are found on the PoliceLink Command intranet.

The templates were updated in May 2018. The new templates regarding the validity of access applications and correspondence to the applicant regarding the extension to the timeframe to decide the access application, do not include the name of a staff member, only a signature and a position.

In this respect, our audit identified inconsistent practices relating to legislative requirements across the files including the requirements for notices under the GIPA Act.

Some notices of decision included both the signature and the name of a staff member, however, others only had the signature and position. In some instances the signatures were not sufficiently legible to allow identification of the officer's name.

Recommendation 5: NSWPF include the contact details of an officer to who inquiries can be directed in connection with the decision in compliance with section 126 of the GIPA Act.

Recommendation 6: In conjunction with the finalisation of its templates and SOP, NSWPF review all templates and SOPs to ensure compliance with sections 61 and 126 of the GIPA Act. This should occur by 30 April 2019.

4.4 GIPA search requirements

Section 53(2) of the GIPA Act provides that an agency must undertake such reasonable searches as may be necessary to find any of the requested information that was held by the agency when the access application was received. Within some agencies, a staff member processing an access application must at times, request other staff members or business units to conduct searches for information.

Criterion	Result
a Identification of parameters of GIPA application	Improvements recommended
b Established records storage and retrieval system	Multiple systems
c Identification of business units	Improvements recommended
d Referral to business units	Improvements recommended
e Retrieval from business units	Improvements recommended
f Certification on return by officer conducting search	Improvements recommended

Comments, findings and recommendations

Comment: NSWPF advised it conducts some searches for information within the PoliceLink Command, whereas other searches may need to be referred to other business units, Police Area Commands (PAC)/Police Districts (PD). NSWPF advised the new SOP will include information regarding how to conduct searches and what is considered to be a reasonable search to assist staff. It was reported that further training and the provision of up to date organisational structures and key contact officers for staff would assist with the timely identification of appropriate units.

It was reported to the audit that the number of structures/units make it difficult for officers managing applications to identify where a search request should be sent.

In relation to search requests that were sent out to other business units within NSWPF, a GIPA Instruction Sheet and checklist is attached to an email. The GIPA Instruction Sheet does not provide instruction on the search terms, the search terms used, or a copy of the access application. However, a copy of the access application is provided if requested. The email itself includes summary information of the application relating to management of the file. The summary is developed by the InfoLink staff member and therefore does not purport to precisely reflect the scope of the applicant's request.

NSWPF advised that it is moving toward a proactive model, involving sending reminders that a search request is due, rather than following up after the due date has passed.

Finding: Currently there is an informal process where an outstanding search request is escalated to a more senior staff member for actioning. Escalation occurs once a staff member has attempted to follow up on several occasions.

Our audit did not identify a formal process for the follow up of search requests or an escalation model in the event of a non-response. Requests are not followed up in any systematic manner.

Recommendation 7: NSWPF provide further instruction regarding search terms and a copy of the access application when sending search requests. This should be implemented by 30 April 2019.

Recommendation 8: NSWPF ensure that training is provided to staff regarding reasonable searches and the identification of appropriate business units within the NSWPF organisational structure. It is recommended that identification of key personnel (by role) is included into the SOP.

Recommendation 9: NSWPF prioritise the development of a process by 30 April 2019 (for inclusion in the new SOPs) regarding the handling of search requests sent outside of PoliceLink Command. This may include:

- Recording and notifying a senior officer at the PAC/PD that a search request has been sent to the PAC/PD for actioning; and
- a formal and documented escalation process to assist staff when they do not receive a response from the PAC/PD to a search request.

When considering the issue of searches, NSWPF should have regard to the guidance issued by the Information Commissioner in the fact sheet [The role of principal officers and senior executives in supporting the objects of the GIPA Act](#)

Recommendation 10: NSWPF prioritise by 30 April 2019, the development of a template for internal communication regarding the conduct of search requests (including any notification and escalation process) as outlined above.

Recommendation 11: NSWPF prioritise by 30 April 2019 the development of a template for internal communication regarding the completion of searches and include a certification template to better identify the: searches conducted, search terms applied, systems searched, information identified, and where relevant, specify the factors for and against disclosure for consideration by the decisions maker. It is also recommended that the certification is completed and signed by the officer conducting the search prior to return to the GIPA access application decision maker.

Recommendation 12: NSWPF develop by 30 April 2019 a documented protocol for the escalation and management of non-response to search requests. Ideally, senior officers responsible for information access in PACs/PDs should be provided with a report of all instances of non-response to a search request on no less than a monthly basis.

4.5 GIPA case management

Criterion		Result
a	Average time from receipt to acknowledgement	Adequate – 1.2 days (av.)
b	Average timeframe from receipt to finalisation	Inadequate – 28.7 days (av.) (outside the 20 working day decision period as stated in section 57(1) of the GIPA Act)

Comments, findings and recommendations

Comment: While the timeframes to decide some access applications were extended by agreement with the access applicant (pursuant to section 57(4) of the GIPA Act) on review of the sample files, decisions were generally made outside the 20 working days required under the GIPA Act.

NSWPF advise that the InfoLink Unit is:

- transitioning from a paper based system to a fully electronic system,
- changing workflows to streamline the process of handling access applications.

At the time the audit was conducted, the NSWPF had 1009 access applications on hand and of these, 684 had passed the due date. Therefore, 68% of access applications on hand were a deemed refusal as they were not decided within the 20 working day timeframe. Of the 684, 643 were awaiting a late decision to be made pursuant to section 63(2) of the GIPA Act. The applications awaiting a late decision represented 94% of the applications on hand.

Whilst the 1009 applications on hand represent a subset of the annual applications received by NSWPF (approx. 6,000 p/annum) the data provided during the course of this audit represents a significant deterioration in the performance as reported by NSWPF under their 2017/18 annual reporting requirement.

In 2017/18 NSWPF reported to the Information Commissioner and recorded in their annual report that 82% of valid applications were decided within time for the period 2017/18. However from the sample provided in this audit 68% of applications were not decided within time representing a significant compliance failure and a critical contrast with the outcomes reported by NSWPF in 2017/18.

The timeframe from receipt to finalisation and the number of applications that were deemed refusals reflects the current backlog the InfoLink Unit is experiencing and the deterioration in its decision making timeliness compared to previous years. NSWPF advised that this was attributable to the high volume of access applications it receives and a reduction in the number of staff in key positions which had arisen due to a number of circumstances experienced by NSWPF. NSWPF advised that additional new staff would commence at the end of January 2019. NSWPF advise that the new staff would fill permanent vacancies as well as providing additional resources to assist in remedying the current backlog. NSWPF have advised that it is planning for access applications to be submitted electronically in the future which will remove the need for these applications to be manually uploaded into AAMS.

This data further confirms the significant and concerning deterioration in performance and ultimately compliance with the GIPA Act statutory timeframes by NSWPF. On the basis of the data reported by NSWPF and the data acquired by the IPC in the course of the audit it appears that this marked deterioration in compliance occurred over a period of less than six months.

The rapid deterioration in performance demonstrates the acute need to implement systems to identify, monitor, report and escalate GIPA Act compliance generally. Implementation of systems requires strategic vision, oversight and importantly commitment.

Finding: In December 2018, NSWPF had 1009 access applications and of these, 684 had passed the due date.

In the audit sample 68% of applications were not decided within time in accordance with the legislation.

The applications awaiting a late decision represented 94% of the applications on hand.

Recommendation 13: NSWPF provide the IPC with a report regarding its management of GIPA applications and resource application on a quarterly basis commencing 1 May 2019. That report should reflect existing annual reporting requirements and current and proposed resources applied to the GIPA Act functions.

4.6 Scope and assistance

Criterion	Result
a Appropriate assessment and action in accordance with s60(4) where required	Adequate
b Appropriate documenting and filing of telephone and email contacts with the applicant	Adequate

Comments, findings and recommendations

Comment: For the purposes of the audit information was provided demonstrating that staff record telephone calls, file notes, emails and other correspondence within its AAMS electronic record keeping system. This includes communication with the access applicant, other business units and PACs/PDs. Additionally the methodology applied was largely concerned with an assessment of performance as distinct from identification of instances in which communication should have occurred and did not. We also observed that there was no guidance on best practice for capturing the details of file notes, and telephone discussions.

Finding: The records provided by NSWPF demonstrated that staff are generally engaging with access applicants and other units within NSWPF to ensure that follow up requests for information are made.

However the reviewed sample did contain cases in which, file notes were captured on the physical hard copy of the file and not in the AAMS electronic record keeping system.

Recommendation 14: NSWPF ensures that staff contact applicants as required throughout the processing of the access application; and informed by the findings in relation to deemed refusals, NSWPF should ensure that where an access application has become a deemed refusal, applicants are advised as a matter of priority in order to ensure they are aware of their right to apply for an internal review within 20 days of the deemed refusal.

Recommendation 15: NSWPF develop internal guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants that aligns with the guidance provided under the [NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government](#) and [Effective Complaint Handling Guidelines](#). The internal guidance be included into its SOP training for all staff to ensure consistency of approach and promote compliance with legislative timeframes.

4.7 Decision making

Criterion		Result
a	Sample met the requirements of section 61 (Notice of decision to refuse access) and section 126 (requirements for notices)	34% of sample met the requirements for section 61 of the GIPA Act 67% of sample met the requirements for section 126 of the GIPA Act
b	Sample reflects proper application of a) Schedule 1 and b) Schedule 2 of the GIPA Act	Not measurable within the sample

Comments, findings and recommendations

Comment: The premise of the GIPA Act is to provide access to information unless there is an overriding public interest against disclosure (OPIAD). This requires a proper application of the public interest test (section 13 of the GIPA Act), including an acceptance of the presumption in favour of the disclosure of information (section 5 of the GIPA Act), the identification of relevant OPIADs, or conclusive overriding public interest against disclosure (COPIADs) and the application of the factors in favour and against release of the particular information.

Application of the public interest test also requires identification of the effect that would result should the requested information be released. Decisions under the GIPA Act must be made in accordance with the principles that apply to determination of the public interest (section 15 of the GIPA Act).

Additionally section 61 of the Act requires, inter alia that an agency's reasons set out findings on any material questions of fact and references to the sources of information on which those findings are based. In a small number of files reviewed (5 files) there appeared to be an absence of a demonstrable nexus between the application of the OPIAD and the actual information sought by the applicant.

The IPC Notice of Decision template provided as guidance to assist agencies in meeting relevant statutory requirements provides examples of the application of the public interest test to demonstrate compliant decision making.

In 35 of the audited files the OPIAD was simply asserted and there was no explanation of the prejudice or consequence of the release of information. In these cases there was a failure to address the specific information to which the OPIAD applied to. This therefore resulted in an absence of a demonstrated reasoning process setting out what weight should be afforded to the OPIAD relied on to demonstrate application of the statutory public interest test as required of decision makers under the GIPA Act.

NSWPF advised that the majority of access applications (93%) received by NSWPF in 2018 were for personal information. According to the NSWPF agency dashboard for 2016/17 95% of applications sought personal information. In these circumstances, particularly where applicants make requests for their own personal information NSWPF are encouraged to include further training or assistance to staff that may better inform the application of OPIADs and generally elevate the quality of decision making in relation to requests for personal information.

Such applications may present an opportunity for NSWPF to explore the informal release of information and thereby decrease resource application under the formal access application pathway.

Given the volume of applications received by NSWPF the agency is encouraged to continue its efforts to explore all opportunities to release information under the four access pathways provided under the GIPA Act.

Finding: 34% of sample met the requirements for section 61 of the GIPA Act.

67% of sample met the requirements for section 126 of the GIPA Act.

The sample files demonstrated a failure to adequately meet the statutory requirements for decision making in respect of notices of decisions. This was particularly evident from those cases in which the reviewed file simply asserted the consideration but did not identify for example the function or the prejudice to the function that would occur as a result of the information to be released (Table to section 14 GIPA Act).

Recommendation 16: NSWPF includes further training or assistance to staff to enhance the decision making process ensuring that notices of decision reflect the requirements of the GIPA Act and regulatory guidance.

4.8 Training and guidance

The audit results reflect information obtained at the time of conducting the audit.

Criterion	Result
a Frequency of training provided to officers acting under delegation of GIPA functions over the last 2 years	Training had occurred in the last two years
b Frequency of training provided to officers responding to GIPA requests for information over the last 2 years	Nil
c Frequency of communications provided over the last 2 years to officers performing GIPA functions under delegation regarding GIPA policies/guidance	Nil
d Frequency of communications provided over the last 2 years to officers about understanding requirements and responding to GIPA requests for information	Nil

Comments, findings and recommendations

Comment : NSWPF staff have previously participated in GIPA training with an external provider. NSWPF advised that new staff commencing in January 2019 will participate in three weeks of training – related to operations generally, GIPA functions, and databases, along with on the job training.

Changes in legislation and significant NCAT decisions are currently emailed from team leaders/manager within the InfoLink unit. However, it was not identified in our audit that there was a formal process in place for communicating these changes or decisions or a consideration of how those decisions may affect or change the practices applied by the NSWPF.

Recommendation 17: NSWPF ensures that regular ongoing training/communication is provided to all staff who have or will have responsibility for processing access applications. This should include staff that may be requested to undertake a search in response to an access application request.

Recommendation 18: NSWPF ensures appropriate and timely communication of legislative changes and NCAT decisions to assist staff.

4.9 Internal reviews

Criterion	Result
a Notice of receipt of application for internal review issued within 5 working days after application is received	1 day (av.)
b Internal reviews conducted by a person who was not the original decision maker, and no less senior than the original decision maker	Compliant – internal reviews are conducted by the Advisory and Education team who do not make decisions on access applications and are no less senior to the original decision maker
c A decision is made and the applicant notified within 15 working days after receiving the application for internal review (timeframe from receipt to finalisation)	Non-compliant. 37.2 days (av.) for those internal review applications within the sample
d Internal review is done by making a new decision, as if the decision being reviewed (the original decision) had not been made	Adequate
e Internal review has been conducted on the applicant's request or grounds for review only	Adequate
f Timeframe from original decision to internal review decision	Unable to assess based on the onsite audit data - NSWPF post audit data demonstrates improvements required.
g Was the original decision upheld?	Out of 70 internal reviews, 19 decisions were upheld (27%)

Comments, findings and recommendations

Comment: *Criteria f Timeframe from original decision to internal review decision*

Review rights are an essential feature of the right to access information. Applicants' rights can be extinguished through the expiration of time and strict timeframes apply to the exercise of agency functions. The GIPA Act requires an applicant to make an application for internal review within 20 working days of receipt of the original notice of decision and the agency must, in the absence of consent by the applicant, determine and give notice of the internal review decision within 15 working days from receipt of the application for internal review. Accordingly, in general a total timeframe of 35 working days applies from the date of the original decision to the issuance of an internal review decision. On the information available it was not possible during the course of the audit to assess the timeframe from notice of original decision to notice of the internal review decision.

Following the on-site audit NSWPF provided the IPC with data it had collated from its systems which captured the timeframe between original decision to finalisation of the internal review decision. That data confirmed that there were 19 instances in which the timeframe was 40 or more calendar days and 7 instances where the timeframe exceeded 90 calendar days.

In the instance where an internal review was not made within the statutory timeframe, a late decision cannot be issued. This is because:

- Section 86(1) of the GIPA Act provides that an agency must make its decision on an internal review and give the applicant notice of the agency's decision within 15 working days (the review period) after the agency receives the application for internal review.
- Section 86(5) of the GIPA Act provides that if a decision on the internal review is not made within the review period, the agency is deemed to have made that decision by making the original decision again, and the applicant for review is entitled to a refund of any fee paid to the agency for the review.
- There are two exceptions which allow the agency to make a decision after the review period (15 working days) has expired: i) where an extension is required for consultation or ii) by agreement with the applicant: sections 86(2) and 86(4) of the GIPA Act.
- Section 86(5) of the GIPA Act is to be contrasted with section 63(2) of the GIPA Act which deals with initial applications and provides that the deemed refusal to deal with an application does not prevent the agency from continuing to deal with the application and subsequently deciding the application and giving notice of its decision (a late decision) on the application. Accordingly, agencies can make a 'late decision' in respect of an access application, but section 86(5) provides a deeming provision and thereby prevents the making of a late decision on internal review.

The IPC reviewed a number of internal review applications that were then also classed as a deemed refusal, as a decision on internal review was not made within the 15 working day period. Some of these followed a deemed refusal on the original access application. In these instances, NSWPF were issuing a late notice of decision.

For the period 2017/18 NSWPF reported that 168 (2.8%) of its applications were reviewed and of those reviews 92 (55%) were subject to internal reviews. On this basis the data provided by NSWPF in relation to the number of internal reviews on hand (22) provides a statistically meaningful sample.

At the time of the audit, the Advisory and Education team had 22 internal reviews awaiting a decision. Of these, 20 were related to a deemed refusal of the original access application. This equates to 90% of the internal reviews on hand.

Accordingly, the commentary and recommendations provided in respect of compliance with statutory timeframes for initial decisions is equally applicable to the failure by NSWPF to comply with the statutory timeframes for the conduct of internal reviews evidenced by the data provided by NSWPF.

Finding: NSWPF has demonstrated substantial non-compliance with the statutory timeframes provided under the GIPA Act in respect of internal reviews.

The sampled files did not reflect a proper application of Division 2 of Part 5 of the GIPA Act in respect of deemed refusals of internal review applications. In the absence of clear communication to applicants, this situation may adversely impact applicants in respect of clarification of their review rights sufficient to enable them to be exercised.

The proposed SOP includes a tab 'Internal Decision Review' which will provide guidance on completion of internal reviews in future. The proposed SOP does not in its current form ensure compliance with the GIPA Act reflective of the distinctions set out above regarding late notices of decision on internal review.

Recommendation 19: NSWPF issue correspondence to applicants and advise that in circumstances of an internal review which is not made within 15 days the original decision may be reviewed by the Information Commissioner or NSW Civil and Administrative Tribunal (NCAT). The correspondence should also include a refund of any fee paid for the review. The new SOP should be updated to reflect these legislative requirements. This action should be undertaken as a priority and be implemented by 30 April 2019.

Recommendation 20: NSWPF provide the IPC with an update regarding the number of matters awaiting internal review and advise of procedures to refund fees in accordance with section 86(5) of the GIPA Act on a quarterly basis commencing 1 May 2019.

4.10 Process following recommendations from Information Commissioner

Comments, findings and recommendations

Comment: The capacity for the agency to monitor and measure its responsiveness to section 93 recommendations assists the agency to understand its overall performance and can assist to identify areas where systemic issues may require attention, such as where recommendations are made as a result of deemed refusal decisions. This in turn assists an agency to identify appropriate measures for addressing such issues.

The IPC's data derived from applications for review of a decision by NSWPF provides that of the applications for review conducted by the IPC approximately 40% resulted in a section 93 recommendation to the agency.

The NSWPF draft SOP includes a tab 'Section 93 Review' which provides guidance on who can reconsider a file (after recommendation from the IPC) and the timeframe in which this must be completed. As part of the audit, the IPC requested further data from the NSWPF as follows:

- Was a section 93 recommendation made?
- Did the agency follow the section 93 recommendation and reconsider the decision?
- Did the agency make a new decision as a result of the reconsideration?

- Was the new decision different to the original decision?
- Did the new decision release or refuse information?

Finding: NSWPF was unable to provide the information in relation to the above questions as to do so would require a manual review of its database's electronic files. As this information is not available, the IPC has made general recommendations informed by available data.

Recommendation 21: NSWPF update the draft SOPs and its case management systems to include 'Recommendations from IPC' as this will encompass section 93 recommendations together with other recommendations as listed in Part 5, Division 3 of the GIPA Act – Review by Information Commissioner. This should include the capacity for reporting against the number of recommendations made and the agency response.

Recommendation 22: NSWPF provide regular internal reports regarding section 93 recommendations having regard to access applicant review rights to the NSW Civil and Administrative Tribunal.

5 Complaint to the Information Commissioner

5.1 Complaint

On 30 October 2018, the IPC received a complaint under the GIC Act. The Complainant applied for information about a local Police Station.

The complaint issues were:

- the delays in processing the access application in accordance with the statutory timeframes under the GIPA Act, resulting in requests for extension of time by the NSWPF, extensive delays and missed deadlines; and
- failure by the NSWPF to provide any further information about the status or progress of the access application following the expiry of the due date of decision until the provision of the late notice of decision.

These issues were considered by way of an audit in accordance with section 17(g) of the GIPA Act. The audit examined the NSWPF's handling of access applications.

This report records the outcome of this regulatory examination including the provision of general guidance and recommendations as relevant to the issues raised in the complaint.

5.2 Assessment of complaint

The IPC considered the complaint issues along with information provided by the NSWPF during the compliance audit.

Following initial enquiries the IPC identified that the complaint involved consideration of the exercise of functions by the NSWPF relevant to:

- statutory time frames for notices and decisions
- communicating with applicants in accordance with the intent of the GIPA Act
- the conduct of searches for information.

During the course of the audit the IPC examined the particulars of the access application by the Complainant and the handling of that application by NSWPF. This examination was confined to the conduct (action or inaction) of the NSWPF in exercising its functions under the GIPA Act, and did not review the decision itself.

5.3 Audit observations and findings

5.3.1 Systems, policies and practices to support compliance with statutory timeframes and communication with applicants

Relevant to NSWPF systems, policies and practices to support compliance with statutory timeframes and communication with applicants the IPC identified that:

- the information requested by the Complainant was held outside of the PoliceLink Command;
- a request for information was sent to the Police Area Command (PAC);
- not all relevant business units were identified by the initiating search officer. Consequently, later identification of other relevant business units resulted in a delay in sending a further search request to other relevant business units – specifically the Police Properties Group (PPG);

- there was an absence of regular communication with the Complainant regarding the progress and status of the access application including communication regarding the Complainant's consent or otherwise to the extension of statutory times in which NSWPF could make a decision;
- the access decision was not made within the statutory timeframes; and
- a decision was made outside the statutory timeframes.

The NSWPF operational context is relevant to the examination of performance of GIPA Act functions.

The number of valid access applications received by NSWPF for the period of 2017/2018 was 6035. The number of valid access applications received by all agencies for the period of 2017/2018 was 15 918. Accordingly, NSWPF represents approximately 38% of all GIPA applications and receives the highest volume of GIPA applications. These volumes accord with data reported since the commencement of the GIPA Act and associated reporting requirements.

In response to the issues raised in the complaint NSWPF advised that:

- the InfoLink Unit, dedicated to managing GIPA Act applications is experiencing a backlog in access applications and a shortage of staff, contributing to the number of deemed refusals (where a decision on an access application has not been made in time);
- new staff will commence at the end of January 2019; and
- NSWPF were in the process of updating all Standard Operating Procedures (SOPs) for GIPA Act functions.

Draft documents, including SOPs were provided and considered in the course of this audit.

Under the decentralised search arrangements implemented by NSWPF an officer conducting searches is distinguishable from an officer delegated to make an information access decision. In these circumstances, while an officer conducting a search may have concerns as to the release of the information, the decision as to whether the information falls within the scope of the request is a matter for the decision maker.

IPC enquiries identified some deliberation recorded in emails by the officer requested to undertake the search as to whether the information was within the scope of the access application.

The responsibility of the officer conducting the search is to perform reasonable searches using key search terms to locate the information. The information located and any identified factors relevant to the release of the information should be provided to the delegated decision maker to apply the public interest test under the GIPA Act, weighing the factors in favour of and against disclosure to determine where the public interest lies.

It was apparent that the access application made by the Complainant was not decided within the statutory timeframe. This accords with the number of late decisions and deemed refusals within NSWPF generally at the time of the audit. Ultimately NSWPF made a late decision and rights of review attached to that decision.

Central to the complaint by the Complainant was an alleged lack of communication by NSWPF about the status and progress of the access application.

The object of the GIPA Act includes that the Act is interpreted and applied to facilitate and encourage, the prompt access to information. This object is well served by the inclusion of strict statutory timeframes for communication with applicants.

The IPC audit noted that once the access application was due, there was no communication to the applicant by way of update. The access applicant made enquiries with NSWPF on two occasions regarding the status of the access application.

The due date for the access application triggers the notice of decision requirements under the GIPA Act. Accordingly applicants have, in the absence of further information, an expectation of finalisation of the access application in accordance with those statutory timeframes.

On review of the file there is no evidence that NSWPF initiated any communication with the Complainant prior to the date of the final agreed date of extension and did not provide appropriate further communication with the applicant subsequent to that date. As a result, the Complainant was required to contact NSWPF to seek an outcome and ultimately the due date expired in the absence of notification to the Complainant.

The IPC found that a contributing cause for the lateness in the decision was the inadequate identification of the relevant business areas that would likely hold the relevant information. This suggests a lack of familiarity with the broader structure of the NSWPF and the discrete business areas that may hold relevant information.

5.3.2 Systems, policies and practices to support the conduct of searches

Relevant to NSWPF systems, policies and practices to support the conduct of searches the IPC identified that:

- officers conducting searches appear to be confident in identifying the relevant area command for information relevant to a particular NSWPF event in a particular location. However not all information would always be held by the PAC/PD or about a particular police event, as was the case in this instance.

A review of management of searches in this application identified that there was no process in place to record:

- the NSWPF officer or staff member who conducted the searches;
- what information was searched for;
- what search terms were applied.

For the purpose of examining NSWPF systems, policies and practices that support the exercise of NSWPF functions in conducting searches, two questions identified in case law are relevant:

- Are there reasonable grounds to believe that the requested information exists and is information of the agency?

- Were the efforts made by the agency to locate the information reasonable in the circumstances of the case?

In determining whether reasonable searches have been conducted, relevant considerations include:

- the clarity of the request;
- the way the agency's record-keeping system is organised; and
- the ability to retrieve any documents that are the subject of the request, by reference, to the identifiers supplied by the applicant or those that can be inferred reasonably by the agency from any other information supplied by the applicant.

Assessment of the conduct of searches is also informed by certification procedures in place within an agency. The case of *Turner v NSW Health Pathology, Forensic & Analytical Science Service (2017)*³ provides guidance regarding certification processes. In that matter, the Tribunal ordered the agency to conduct specified additional searches and to provide a statement from each person who conducts any of those searches that identifies:

- what searches are conducted;
- where and how those searches are conducted; and
- what information or documents, if any, resulted from those searches.

This approach by the Tribunal confirms the importance of ensuring accountability at an individual level, and is particularly important in a devolved system.

The IPC has issued guidance to assist agencies: [The role of principal officers and senior executives in supporting the objects of the GIPA Act](#) .

The IPC found that the absence of demonstrated application of systems, policies or practices to support the conduct of searches retards NSWPF ability to perform its statutory functions in accordance with judicial and regulatory guidance.

This audit highlighted the need for NSWPF to deliver more specific guidance to initiating search officers on the structure and business areas within NSWPF. This should include the identification of those key personnel who can facilitate prompt and timely responses to a search return.

Additionally, this audit identified that there is further need to assist the search process through the identification of key search terms.

Training to the broader Police Force on the role of officers/staff in responding to a search request may promote awareness of the responsibilities of the principal officer, the NSW Police Commissioner under the GIPA Act and highlight the importance of these statutory functions.

³ Turner v NSW Health Pathology, Forensic & Analytical Science Service [2017] NSWCATAD 114

Additionally, those responsibilities may be well served by training and guidance that confirms the identification of OPIADs/COPIADs and general views of the officer returning documents may be considered by the decision maker but are not of themselves determinative or binding. Assistance in the search process may be achieved through inclusion of the IPC [Quick Guide to My Responsibilities under the GIPA Act](#).

5.4 IPC Regulatory Guidance

Timeliness and Searches

NSWPF is a uniquely high volume environment for dealing with access applications. In order to ensure compliance with statutory timeframes NSWPF should mobilise resources in response to trends in application numbers. Increasing volumes may respond to increasing resource allocation during peak periods and more effective systems to identify and respond to surges. Sufficient resilience and flexibility in the agency's structure would ensure that NSWPF is ready to respond effectively and observe the statutory responsibilities of the principal officer. This may require a commitment to diverting additional resources as and when required.

This audit does not make recommendations regarding the number of officers involved in GIPA functions. However other high volume agencies have been identified in successive reports on the operation of the GIPA Act. Those reports together with the publically available GIPA Agency Dashboard recognise an appreciable difference in the capacity of those agencies to achieve statutory timeframes when compared with NSWPF. Liaison with those agencies in respect of resourcing requirements and capabilities may prove instructive for NSWPF in considering resourcing requirements.

Additionally NSWPF may effectively address complexity in the nature and scope of access applications through increased training and capacity building.

Importantly this audit, in particular the absence of demonstrated application of essential search processes has highlighted limitations regarding accountability and governance in the performance of GIPA Act functions. This presents a risk to compliance with GIPA Act responsibilities.

Communication

The role of Parliament is a key feature of a democratic system of government. Elected representatives play a crucial role in promoting democracy and good governance in a civil society. This includes a role in promoting the transparency of government decision making by public officials in the delivery of public services. The availability of, and access to, information that informs members of Parliament about decisions that potentially have a significant impact on the community will be of interest to them. Greater openness and transparency by government agencies can lead to greater accountability in the conduct of public affairs. In circumstances where agencies refuse to release information, decision making and communication of the outcome of that decision must adhere to the requirements of the GIPA Act.⁴

⁴ Section 61GIPA Act

Consideration of this complaint highlighted delays which offended the statutory timeframes required of NSWPF. The GIPA Act provides mechanisms for the management of delays through communication and agreement of the parties. These mechanisms have the effect of preserving the rights of applicants and enabling agencies to acquit their responsibilities notwithstanding resourcing challenges that may arise from time to time.

Investigation of this complaint has revealed that communication with the applicant regarding significant events including provision of a notice of decision on the due date was absent. NSWPF is encouraged to implement reports to identify and trigger communication in accordance with statutory timeframes.

Additionally NSWPF is encouraged to provide training and updates to staff performing GIPA Act functions. The IPC website contains relevant statutory guidance including an e-learning module *Access Training for Decision Makers under the GIPA Act*.

5.5 Outcome and recommendations

Recommendations are made to elevate compliance and diminish the risk of non-compliance. A number of the recommendations made below align with recommendations made in the broader audit examining NSWPF systems, policies and practices. For ease of implementation NSWPF may elect to avail itself of the opportunity to align the recommendations, and report concurrently to the Information Commissioner.

These recommendations require provision of notification to the Information Commissioner of any action taken or proposed in consequence of the report, pursuant to section 24(3) of the GIIC Act.

The recommendations relevant to the issues raised in this complaint which serve the objective of improving communication and compliance with search requirements and statutory timeframes are:

Recommendation 1	NSWPF provide further instruction regarding search terms and a copy of the access application when sending search requests. This should be implemented by 30 April 2019.
Recommendation 2	NSWPF prioritises by 30 April 2019 the development of a template for internal communication regarding the <u>conduct of search requests</u> (including any notification and escalation process) as outlined above.
Recommendation 3	NSWPF develop by 30 April 2019 a template for internal communication regarding <u>the completion of searches</u> and include a certification template to better identify the: searches conducted, search terms applied, systems searched, information identified, and where relevant, specify the factors for and against disclosure for consideration by the decisions maker. It is also recommended that the certification is completed and signed by the officer conducting the search prior to return to the GIPA access application decision maker.

Recommendation 4	NSWPF ensure that training is provided to staff regarding reasonable searches and the identification of appropriate business units within the NSWPF organisational structure. It is recommended that identification of key personnel (by role) is included into the SOP.
Recommendation 5	NSWPF ensures that regular ongoing training/communication is provided to all staff who have or will have responsibility for processing access applications. This should include staff that may be requested to undertake a search in response to an access application request.
Recommendation 6	<p>NSWPF prioritise the development of a process by 30 April 2019 (for inclusion in the new SOPs) regarding the handling and escalation of search requests sent <u>outside of PoliceLink Command</u>. This may include:</p> <ul style="list-style-type: none"> • recording and notifying a senior officer at the PAC/PD that a search request has been sent to the PAC/PD for actioning; and • a formal and documented escalation process to assist staff when they do not receive a response from the PAC/PD to a search request. <p>When considering the issue of searches, NSWPF should have regard to the guidance issued by the Information Commissioner in the fact sheet, The role of principal officers and senior executives in supporting the objects of the GIPA Act.</p>
Recommendation 7	NSWPF develop by 30 April 2019 a documented protocol for the escalation and management of non-response to search requests. Ideally, Senior Officers responsible for information access in PACs/PDs should be provided with a report of all instances of non-response to a search request on no less than a monthly basis.
Recommendation 8	NSWPF ensures that staff contact applicants, as required throughout the processing of the access application; and informed by the findings in relation to deemed refusals, NSWPF should ensure that where an access application has become a deemed refusal, applicants are advised as a matter of priority, in order to ensure they are aware of their right to apply for an internal review within 20 days of the deemed refusal.

This complaint also highlights the need for better management of access applications in particular communication, timeliness and a culture oriented to achieving compliance with the intent of the GIPA Act. Accordingly the following additional recommendations are made to elevate performance of statutory requirements in relation to communication and the commitment required by leaders to ensure compliance with the statutory responsibilities of principal officers under the GIPA Act:

Recommendation 9

Training regarding statutory timeframes should be provided to staff reflective of the guidance provided by the IPC including the Fact Sheet *Timeframes and extensions for deciding access applications under the GIPA Act*.

Recommendation 10

Circulation of the guidance issued by the Information Commissioner in the Fact Sheet [The role of principal officers and senior executives in supporting the objects of the GIPA Act](#) to highlight the responsibilities of the principal officer and guide all staff but particularly senior staff and staff who act under the delegation of the principal officer in performance of GIPA Act functions.

Additionally in order to address systemic issues the IPC requests that NSWPF provide an update regarding the backlog in deciding access applications and internal review applications; and staffing numbers on a quarterly basis.

6 Conclusions and recommendations

6.1 Conclusions

This audit was informed by:

- IPC data and information including reviews and complaints
- NSWPF data reported in respect of annual reporting requirements and data provided as a consequence of the audit
- Information obtained during the course of the audit between 10 and 13 December 2018.

In summary, this audit has identified:

- a demonstrable decline in compliance with statutory time frames
- inadequate processes to support compliance with statutory timeframes in respect of search requirements
- instances of decisions which did not, on the face of the notice of decision, meet all of the requirements for a notice of decision as provided by section 61 of the GIPA Act
- instances of a misinterpretation of the statutory requirements for a valid application
- instances of inadequate processes to promote timeliness and case management generally including the absence of communication with applicants at junctures reflective of statutory events and requirements and/or recording of communication generally
- limited training opportunities including provision of regular updates to officers acting under the delegation of the principal office in the exercise of GIPA Act functions.

During the course of the audit, the NSWPF advised that it is reviewing the systems and processes in the way it handles access applications, and these results should be viewed in the context of a shortage of staff.

Staff and resources including systems, policies and practices to support the exercise of GIPA Act are essential to compliance with statutory obligations. Accordingly, the NSWPF should prioritise the completion of the InfoLink /PoliceLink Command SOPs. Additionally, NSWPF should implement ongoing training for all staff in processing applications within statutory timeframes and notices of decision.

6.2 Recommendations

Based on the findings of this audit, it is recommended that the NSWPF implement the following within the timeframes specified:

Recommendations	
Recommendation 1	NSWPF ensure that the delegation instrument is updated to reflect any new positions responsible for exercising functions under the GIPA Act within 4 weeks of the commencement of the newly created positions.
Recommendation 2	NSWPF circulate a copy of the delegation instrument to all staff within the PoliceLink Command – InfoLink Unit on commencement of employment and at any time in which the delegation instrument is updated, and ensure the location of the instrument is communicated to all staff within the PoliceLink Command - InfoLink Unit.
Recommendation 3	NSWPF prioritise completion of the SOP dealing with valid applications by 30 April 2019. This should include the delivery of internal training to ensure common understanding of the application of the SOP.
Recommendation 4	NSWPF remove the requirement (as currently outlined on the website and in the draft SOPs) that for an access application to be valid it requires a postal address in Australia. In reviewing these requirements, NSWPF should also consider the effect of any legislative amendments which came into effect on and from 28 November 2018. This should be completed by 12 April 2019.
Recommendation 5	NSWPF include the contact details of an officer to whom inquiries can be directed in connection with the decision in compliance with section 126 of the GIPA Act.
Recommendation 6	In conjunction with the finalisation of its templates and SOP, NSWPF review all templates and SOPs to ensure compliance with sections 61 and 126 of the GIPA Act. This should also occur by 30 April 2019.
Recommendation 7	NSWPF provide further instruction regarding search terms and a copy of the access application when sending search requests. This should be implemented by 30 April 2019.
Recommendation 8	NSWPF ensure that training is provided to staff regarding reasonable searches and the identification of appropriate business units within the NSWPF organisational structure. It is recommended that identification of key personnel (by role) is included into the SOP.
Recommendation 9	NSWPF prioritise the development of a process by 30 April 2019 (for inclusion in the new SOPs) regarding the handling of search requests sent <u>outside of PoliceLink Command</u> . This may include:

	<ul style="list-style-type: none"> recording and notifying a senior office at the PAC/PD that a search request has been sent to the PAC/PD for actioning; and a formal and documented escalation process to assist staff when they do not receive a response from the PAC/PD to a search request. <p>When considering the issue of searches, NSWPF should have regard to the guidance issued by the Information Commissioner in the fact sheet The role of principal officers and senior executives in supporting the objects of the GIPA Act.</p>
Recommendation 10	NSWPF prioritises by 30 April 2019 the development of a template for internal communication regarding the <u>conduct of search requests</u> (including any notification and escalation process) as outlined above.
Recommendation 11	NSWPF develop by 30 April 2019 a template for internal communication regarding the <u>completion of searches</u> and include a certification template to better identify the: searches conducted, search terms applied, systems searched, information identified, and where relevant, specify the factors for and against disclosure for consideration by the decisions maker. It is also recommended that the certification is completed and signed by the officer conducting the search prior to return to the GIPA access application decision maker.
Recommendation 12	NSWPF develop by 30 April 2019 a documented protocol for the escalation and management of non-response to search requests. Ideally, Senior Officers responsible for information access in PACs/PDs should be provided with a report of all instances of non-response to a search request on no less than a monthly basis.
Recommendation 13	NSWPF provide the IPC with a report regarding its management of GIPA applications and resource application on a quarterly basis commencing 1 May 2019. That report should reflect existing annual reporting requirements and reflect current and proposed resources applied to the GIPA Act functions.
Recommendation 14	NSWPF ensures that staff contact applicants, as required throughout the processing of the access application; and informed by the findings in relation to deemed refusals, NSWPF should ensure that where an access application has become a deemed refusal, applicants are advised as a matter of priority, in order to ensure they are aware of their right to apply for an internal review within 20 days of the deemed refusal.
Recommendation 15	NSWPF develop internal guidance on best practice for the format and content of file notes, telephone discussions and contact with applicants that aligns with the guidance provided under the NSW Ombudsman Good conduct and administrative practice – Guidelines for state and local government and Effective Complaint Handling Guidelines . The internal guidance be included into its SOP training for all staff to ensure consistency of approach and promote compliance with legislative timeframes.

Recommendation 16	NSWPF includes further training or assistance to staff to enhance the decision making process ensuring that notices of decision reflect the requirements of the GIPA Act and regulatory guidance.
Recommendation 17	NSWPF ensures that regular ongoing training/communication is provided to all staff who have or will have responsibility for processing access applications. This should include staff that may be requested to undertake a search in response to an access application request.
Recommendation 18	NSWPF ensures appropriate and timely communication of legislative changes and NCAT decisions to assist staff.
Recommendation 19	NSWPF issue correspondence to applicants and advise that in circumstances of an internal review which is not made within 15 days the original decision may be reviewed by the Information Commissioner or NSW Civil and Administrative Tribunal (NCAT). The correspondence should also include a refund of any fee paid for the review. The new SOP should be updated to reflect these legislative requirements. This action should be undertaken as a priority and be implemented by 30 April 2019.
Recommendation 20	NSWPF provide the IPC with an update regarding the number of matters awaiting internal review and advise of procedures to refund fees in accordance with section 86(5) of the GIPA Act on a quarterly basis commencing 1 May 2019.
Recommendation 21	NSWPF update the draft new SOPs and its case management systems to include 'Recommendations from IPC' as this will encompass section 93 recommendations together with other recommendations as listed in Part 5, Division 3 of the GIPA Act – Review by Information Commissioner. This should include the capacity for reporting against the number of recommendations made and the agency response.
Recommendation 22	NSWPF provide regular internal reports regarding section 93 recommendations having regard to access applicant review rights to the NSW Civil and Administrative Tribunal.

6.3 Monitoring

The IPC will continue to assist the NSWPF as it adopts these recommendations. The IPC proposes to monitor the NSWPF compliance with the GIPA Act by conducting a follow up audit within 12 months from the date of this report.

The NSWPF is asked to report to the Information Commissioner quarterly, pursuant to section 24(3) of the GIIC Act, on the implementation of the recommendations made arising from this audit commencing 1 May 2019.

7 Audit chronology

Date	Event
19 November 2018	IPC Notification of audit to the NSW Police Force in accordance with section 22(1) of the GIIIC Act (requesting commencement in December 2018)
29 November 2018	Correspondence from NSWPF responding to audit notification
10 -13 December 2018 inclusive	Conduct of audit by IPC
13 December 2018	Conclusion of onsite audit and request for additional information to be provided by NSWPF
15 January 2019	First provision of additional information by NSWPF
17 January 2019	IPC request for further information and clarification from NSWPF
18 January 2019	Second provision of additional information by NSWPF
25 January 2019	Final and complete provision of additional information by NSWPF
29 January 2019	Progress update provided to NSWPF
21 February 2019	Provision of draft compliance report to NSWPF (requesting response to the IPC by 11 March 2019)
15 March 2019	NSWPF preliminary response to draft compliance report
22 March 2019	NSWPF final response to the draft compliance report
12 April 2019	Provision of final report to NSW Minister for Police and Emergency Services and NSWPF Commissioner

8 Legislation

The following legislation is relevant to the conduct of this audit.

Government Information (Information Commissioner) Act 2009 – relevant sections

- Section 19(1)(a) – How complaints are dealt with
- Section 21- Investigation of agency systems, policies and practices
- Section 24 – Report on compliance with Information Act

Government Information (Public Access) Act 2009 – relevant sections

- Section 9(3) – Access applications
- Table to section 14 - Public interests considerations against disclosure
- Section 17(g) – Role of the Information Commissioner
- Section 53(2) – Searches for information held by agency
- Section 61- Notice of decision to refuse to provide access
- Section 63(2) – Deemed refusal if application not decided within time
- Section 84 – Conduct of internal review
- Sections 86(1), (2) and (5) – Required period for determination of internal review
- Section 93 – Recommendation for reconsideration of matter by agency
- Section 126 – Requirements for notices given by agencies
- Schedule 1 – Information for which there is conclusive presumptions of overriding public interest against disclosure
- Schedule 2 – Excluded information of particular agencies

9 Office of the Information Commissioner: NSWPF Compliance report

In June 2011 the IPC conducted a compliance assessment of the NSWPF:

[Compliance report: Findings and recommendations – Review of the NSW Police Force's compliance with the Government Information \(Public Access\) Act 2009 – 28 June 2011](#)

The 2011 Compliance Report identified five key areas for improvement by the NSWPF:

- Improve resourcing for the Information Access Unit,
- Provide better assistance to applicants,
- Better understand and apply the public interest test,
- Conduct third party consultations where appropriate,
- Review information that may be open access information or can be proactively released.

I note that three of these key areas have again been identified as areas for attention by NSWPF in this audit, specifically, resourcing for the Information Access Unit, provision of assistance to applicants and application and understanding of the public interest test.

The recommendations in this report are intended to assist the NSWPF in addressing the particular areas where compliance continues to require attention.