



information
and privacy
commission
new south wales

NSW Treasury

GIPA Act compliance report – 1 August 2019



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Abbreviations

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

Acronyms or abbreviation	Explanation
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>
IAG UNIT	Information and Governance Unit
IPC	Information and Privacy Commission
OPIAD	Overriding public interest against disclosure

1 Purpose

This audit examines the systems and processes of NSW Treasury (Treasury) 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 Treasury with the GIPA Act in fulfilling its responsibilities under Part 4 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 4, Division 3 – Process for dealing with access applications; Part 4, Division 4 – Deciding access applications; 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; and
- training and guidance for officers undertaking GIPA Act functions.

2 Background

In March 2019, the Information and Privacy Commission (IPC) identified a number of potential risks in relation to Treasury's handling of access applications. These issues were identified through the conduct of IPC regulatory functions including the management of complaints and the conduct of external reviews. Germane to these compliance issues were concerns surrounding the timely provision of information requested by applicants, the type of applicants applying for information from Treasury, and the type of information sought.

In this context, the IPC identified potential risks in the processes and practices for information management including conducting searches for information held; communication with applicants including the provision of assistance as required under the GIPA Act, and in its decision making. Training and guidance for officers undertaking GIPA Act functions and a demonstrated pro-compliance commitment by management to support the exercise of Information Act functions is integral to a robust compliance environment.

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

- the number of applications decided within the statutory timeframe in 2017/18 was 69% compared with 82% within the Government Sector
- of the 49 applications lodged, 9 decisions were reviewed with 56% of these upheld on review
- 76% of applicants to Treasury were from Members of the NSW Parliament compared to 71% of applicants being members of the public to the Government Sector, and
- 96% of applicants to Treasury sought information other than personal information compared to 64% within the Government Sector.

Conduct of the audit and provision of regulatory report

In conducting the audit, representatives of the IPC met with representatives of Treasury, and assessed Treasury's systems and processes for dealing with access applications under the GIPA Act. The IPC appreciates the assistance and co-operation provided by Treasury and its representatives during the audit.

A draft report was provided to Treasury NSW for comment. Treasury responded positively to the draft report; noted its findings particularly that no evidence of a failure to exercise functions in accordance with any provision of an Information Act was found, confirmed a commitment to implementing recommendations together with ongoing review and augmentation of GIPA related systems, policies and practices.¹

This final report addresses where relevant, the issues raised in the response from Treasury and outlines the audit observations and associated recommendations.

¹ GIIC Act section 24(1)

3 Methodology

3.1 Sample selection

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

The IPC audited a random sample of access applications decided by Treasury in the period from July 2017 to May 2019 excluding active applications or those subject to current IPC review.

A total of 10 files were selected at random from a list of 53 GIPA access applications received by Treasury for review. The sample number should be viewed in the context of the number of valid access applications received by Treasury which for the period 2017-18 was 49 access applications.² The sample represents a statistically meaningful number.

The number of valid access applications received by all agencies for the period of 2017-2018 was 15,921. The NSW Treasury dashboard indicates that 49 were received by Treasury for that reporting period. The number of valid access applications received by Treasury for the period of 2018/2019 to date of audit was significantly lower at 16.

The data and majority of 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, Treasury provided additional information concerning policies, procedures, processes, templates and training material relevant to its processing of GIPA access applications. In its assessment the IPC relied on the material provided, information obtained in consultations with Treasury staff, as well as the sample data it assessed during the audit to inform its findings.

3.2 Assessment criteria

The IPC assessed Treasury'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 practices
GIPA templates
GIPA search processes
GIPA decision making
GIPA training, support and communication

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

3.3 Conduct of analysis

The findings of the review are presented in two parts:

- assessment against select criteria that assist examination of Treasury 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 Treasury 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 it was deemed not necessary in providing a breakdown of each file as the findings and recommendations are applicable generally and not specifically.

4 Observations

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.

Observation: Treasury have an instrument of authorisation signed by Michael Pratt, Treasury Secretary, dated April 2019. This update occurred to reflect changes in role titles and is available on the intranet.

Recommendation 1: Treasury is encouraged to actively promote the location, and circulate a copy of the delegation instrument, to all staff within the Information Access and Governance (IAG) unit on commencement of employment and at any time in which the delegation instrument is updated.

4.2 GIPA practices

Within NSW Treasury access applications are managed within the Information Access and Governance Unit (IAG Unit).

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. These are beneficial to agencies to support the effective exercise of GIPA functions, and provide 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	<ul style="list-style-type: none"> • Process map for dealing with access applications in place (undated) • Internal IAG Unit procedure document for access applications (undated) • Procedure for managing <i>Access Applications under the Government Information (Public Access) Act 2009</i> (Created 26/05/2015, issued 02/02/2018, currently under review)

Criterion	Result
	<ul style="list-style-type: none"> Record Retention and Disposal Policy and Procedure in place (Created 21/02/2017, issued 30/06/2017, to be reviewed 30/06/2018)

Comments, findings and recommendations

Comment: Treasury informed the IPC that since 2016 it has developed a centralised approach to GIPA with a committed team engaged with the legislation. They consulted with the Crown Solicitor's Office to establish best practice standards and templates. Their approach in instances of access applications involving personal information is to speak to the applicant and facilitate provision of the information without cost in circumstances where OPIADs are not enlivened. On the internal review of decisions, Treasury maintains separation by escalating the decision making to a senior executive or Department Secretary with the case manager made available for support.

During the onsite audit process, Treasury provided the IPC with a process map of the GIPA process and their internal IAG unit procedure document outlining timeframes and steps for the processing of access applications in determining validity and within the decision period. In addition, Treasury provided an internal policy and procedure document which included information about each element of the GIPA process such as public interest considerations and the public interest test, as well as a record retention and disposal policy and procedure document and other record capture policies. These documents are accessible within a suite of resources available on Treasury's electronic Document and Records Management System, Objective (Objective), and on the intranet.

In terms of case management, a separate folder for each calendar year appears on Treasury's Objective system where each case file is set up with a system generated reference number. All Information Access Unit staff have access to cabinet documents and briefing notes.

Observations: The IPC reviewed the procedural documents provided by Treasury at the audit and observed that there were inconsistent practices in the document management including the recording of creation and review dates.

The content of the IAG Unit procedures document assumes a level of knowledge of the GIPA process and appears to be intended for use by staff trained and working in that unit. It includes a daily schedule of events, actions and responsibilities for each step of the process. It is noted in Treasury's procedure document that the chronology of processes are a guide and may be modified to meet the needs of specific applications. Whilst the IAG Unit procedures document contains a comprehensive processing plan, the prescription of set days for activities implies that the Agency is working to a set 20 day timeframe. Given that the number of applications decided within the statutory timeframe in 2017/18 was 69% compared with 82% across the Government Sector, it would appear that a review of set time parameters may be warranted with a view to promoting finalisation in advance of the statutory timeframe of 20 days.³

³ GIPA Act section 57(1)

Comments, findings and recommendations

In terms of following the prescribed procedures, it was observed from the sample data that there are some inconsistencies in timing between the receipt of an access application and the acknowledgement of validity. Not all GIPA applications are received via email and there is also no evidence of date stamping files upon receipt. Documenting these actions serves to promote compliance with the statutory timeframe for notice of validity and demonstrate that compliance is achieved.⁴

In addition, whilst email communications were stored within the application file, file notes for other forms of communication or contemporaneous decision making was not always recorded. For example, records of telephone calls with applicants to discuss amendments to scope. In this respect, our audit identified inconsistent practices relating to record retention in relation to GIPA application files.

It was observed that GIPA files as maintained and stored in Objective did not include draft versions of decisions. In circumstances where work may be undertaken by different officers at different points in time this may present a risk to the effectiveness and overall integrity of decision making. The Record Retention and Disposal Policy and Procedure document discusses drafts, meaning any version, of a document that may be disposed of when they are of a routine nature. However, it also discusses use of the Objective 'Corporate Value' checkbox which ensures versions of documents are protected and subject to formal retention and disposal processes. This requirement applies to any new version of the document created in the system. It was not clear from the files that were reviewed if this mechanism is activated for GIPA decisions. In the absence of the operation of this systems capability, and physical files, there is an increased risk to agency transparency in its decision making process. Upon receipt of the draft report Treasury confirmed that this functionality was available within existing systems.

Within the Procedure for managing Access Applications under the *Government Information (Public Access) Act 2009* document, section 4.1, Applying for external review by the Information Commissioner states that: *'An applicant may apply directly to the Information Commissioner to have the decision reviewed, without having to seek an internal review. However, a person aggrieved by a reviewable decision must first seek an internal review before going to the Information Commissioner.'* The two statements appear to be directed towards summarising review rights.⁵ However as expressed they appear incompatible with the requirements of section 89 of the GIPA Act.

Whilst 96% of applicants to Treasury sought information other than personal information compared to 64% within the Government Sector, it is acknowledged that Treasury's approach to applicants seeking access to their personal information is to engage with them and provide anything not subject to an OPIAD in an informal process at no cost to the applicant. This approach is to be commended in its promotion of the object of the GIPA Act.

Recommendation 2: A key objective pursuant to section 3 of the GIPA Act is to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information. Treasury is encouraged to consider reviewing the procedure of actions occurring on prescribed days so as to expedite decisions where possible.

Recommendation 3: Treasury is encouraged to apply a consistent approach to the document management for all procedural templates and guidance materials.

⁴ GIPA Act section 51(2)

⁵ GIPA Act ss 89(1) and (2)

Comments, findings and recommendations

Recommendation 4: Treasury to promote the need to maintain contemporaneous file notes where relevant to a GIPA access application through inclusion in training, and relevant documents. This is to ensure that any correspondence in relation to an application is captured and preserved for reference as relevant to the drafting of any notice of decision.

Recommendation 5: Treasury is encouraged to ensure application of its Retention and Disposal Policy and Procedure to notices of decision and other contemporaneous decision related working documents to ensure transparency and efficiency in decision making.

Recommendation 6: Treasury review by 27 September 2019, section 4.1 of the Procedure for Managing Access Applications under the Government Information (Public Access) Act 2009 document to reflect section 89 of the GIPA Act in relation to rights for review by the Information Commissioner.

Recommendation 7: Treasury to promote by 27 September 2019, compliance with section 51(2) of the GIPA Act by instituting processes to track timeframes for receipt and issue acknowledgments of validity within 5 working days of receipt of an access application.

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 Access Application form	Template in place
b Communication with applicant: <ol style="list-style-type: none"> 1. Acknowledgement 2. Opportunity to Amend 3. Consultation 	Templates in place
c 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.

Observations: Treasury have templates for formal communication with applicants, for example, notice regarding the validity of an access application, opportunities to amend the scope of applications, third-party consultation and notices of decision. These templates are found on the Treasury intranet and where applicable are accompanied by current IPC fact sheets.

The templates were created in 2016 under the guidance of the Crown Solicitor's Office.

Comments, findings and recommendations

The templates regarding the validity of access applications and correspondence to the applicant regarding amendments to scope, consultation, and the notice of decision do not include the name of a staff member, only a signature and the role title of the Associate Director, Information Access and Governance Unit.

In this respect, our audit identified a practice that may not be optimally consistent with the legislative requirements for notices under section 126 of the GIPA Act. The IPC review of the templates provided by the Agency demonstrated the identification of two roles relevant to the requirements of section 126(1)(d) which envisages a single point of contact. Relevantly one of the positions identified (Information Access and Governance Officer) was not a position within the agency's organisational structure provided during the audit. In response to the draft report Treasury highlighted practical reasons for inclusion of a title as distinct from a name of an officer in GIPA notices. These reasons appear valid.

However section 126(1)(d) of the GIPA Act requires that notices provide contact details of an officer of an agency to whom inquiries can be directed in connection with the decision or other action of the agency with which the notice is concerned. The provision of two different identified positions to which enquiries can be directed may lead to confusion by applicants. The inclusion of a position which does not exist within the organisational structure or where more than one person holds the same role title exacerbates the potential for confusion and practical non-compliance.

Recommendation 8: Treasury review by 27 September 2019, its compliance with the requirements of section 126 of the GIPA to provide clarity for applicants in respect of their contact with *an officer of the Agency to whom enquiries can be directed in connection with the decision or other action*.

4.4 GIPA search processes

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	Processes in place and action undertaken by the Case Manager
b Identification of business units	Processes in place and action undertaken by the Case Manager
c Referral to business units	Improvements recommended
d Retrieval from business units	Improvements recommended
e Certification on return by officer conducting search	Process in place

Comments, findings and recommendations

Comment: Treasury advised that following a preliminary compliance check and allocation to a case manager, the case manager is responsible for identifying the appropriate branch or business unit to locate the information sought.

Comments, findings and recommendations

Identifying the Business Area Director is generally a straightforward process and easily evident from the organisational charts used by Treasury. The case manager then meets with the relevant business area to discuss and work through any issues with the application. Once an application is deemed to be valid, it is the responsibility of the Business Area Director to conduct searches for information, determine whether any records are held in archive, collate the records, and provide all the documents and a companion of explanations as to any redactions they propose to the case officer in the Objective system workflow for consideration. This process is facilitated by a 'Reasonable Searches and Review Blueprint' form accompanied by the access application which is completed by the Business Area Director and signed off by the Executive Director.

The Business Area Directors are responsible for identifying any requirement for consultation, and a contact list of key staff in other agencies is used to assist in facilitating this process.

Observations: Treasury's 'Reasonable Searches and Review Blueprint' form is a comprehensive search certification template to effectively identify the searches conducted, search terms applied, systems searched, information identified, and where relevant, specify the factors against disclosure for consideration by the decisions maker. It is completed by the officer conducting the search and signed off by the Business Area Director and Executive Director prior to return to the GIPA access application decision maker. This process is also reflective of a sound risk mitigation approach and is commendable.

However, the audit did not identify a documented mechanism for assisting Business Area Directors with search terms which may be useful in conducting searches. The search process relies on the effectiveness of consultation between the case officer and individuals who may be subject matter experts, but who may have limited experience in interpreting an information access application and how to most effectively locate the information requested.

It is acknowledged that the blueprint form requires searching officers to provide search parameters including search terms used. This practice enables the case manager to assess the effectiveness of the searches conducted, upon return of the information. However, the templates applied do not provide a capacity to identify a return date to the case manager. The absence of a return date may lengthen the period of time in which the searches are conducted and provide little opportunity for the case manager to apply their knowledge to an assessment of the returned information and the search terms applied by the business area. There also does not appear to be a clear escalation model to deal with instances whereby search requests have not been actioned to meet the required timeframes. In circumstances where timeliness has been identified as requiring improvement an escalation model for delayed search requests may be an effective treatment.

Recommendation 9: Treasury to update by 27 September 2019, its templates used for search terms to include a due date for return of the search by Business Area Directors.

Recommendation 10: Treasury promote training to key personnel (including Business Area Directors) regarding reasonable searches and identification of search terms from access applications to ensure consistency in the application of search terms.

Recommendation 11: Treasury to consider the development and documentation of an escalation protocol to enhance management of non-responses to search requests. Ideally, the Executive Director responsible for information access should be provided with a report of all instances of non-response.

4.5 GIPA decision making

Criterion	Result
a Sample met the requirements of section 61 (Notice of decision to refuse access) and section 126 (requirements for notices)	100% of sample met the requirements for section 61 of the GIPA Act 11% of sample met the requirements for section 126 of the GIPA Act (based upon the identification of dual roles in notices of decision)
b Sample met the requirements of section 60(4) (provide reasonable opportunity to amend the application)	75% of sample met the requirements for section 60(4) of the GIPA Act
c Sample reflects proper application of a) Schedule 1 and b) Schedule 2 of the GIPA Act	100% of sample reflected proper application of Schedule 1 of the GIPA Act Proper application of Schedule 2 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.

The IPC identified two files in which the scope of the application had been amended following discussion with the applicant. The agency provided records of telephone discussions with the applicant relevant to the amendment of the application.

The GIPA Act provides a number of mechanisms through which an application may be amended.

Under section 60 of the GIPA Act an agency may refuse to deal with an access application (in whole or in part) for a number of expressly provided reasons and for no other reason. However section 60(4) provides that before refusing to deal with an access application because dealing with it would require an unreasonable and substantial diversion of resources, the agency must give the applicant a reasonable opportunity to amend the application.

Additionally section 49 provides for amendment of an application by the applicant. This provision also places obligations upon the agency (section 49(3)) and documentary evidence should be available to demonstrate compliance with those provisions.

There is also a requirement for agencies to assist applicants generally (section 16) and in order to lodge

Comments, findings and recommendations

a valid application (section 52). This advice and assistance may on occasion result in the amendment of the application.

In circumstances where applications are amended agency obligations arise. Accordingly, evidence of compliance with those obligations is inherent in an agency's compliance with the relevant provisions. Given the strict legislative requirements, documenting the basis for the discussions and the provision relied upon is required. In the absence of that documentation the audit could not be satisfied that the agency had achieved full compliance.

Observation: 100% of sample met the requirements for section 61 of the GIPA Act. 11% of sample met the requirements for section 126 of the GIPA Act. The sample files demonstrated an inconsistency with the statutory requirements in respect of notices of decisions, specifically including the contact details of 'an officer' of the agency to whom enquiries could be directed.

It was observed in two sample files that the scope had been narrowed by negotiation with the access applicant, however there was an absence of records regarding the basis for which the request to reduce the scope was made. In one instance, a file note record of a telephone call with an applicant was located; however there were no particulars in relation to the purpose of the request.

Whilst ultimately the agency did deal with the applications in question there was no evidence provided to the audit to identify the reasons for this engagement with the applicant that resulted in the subsequent amendment of the application. Accordingly, the audit was not able to identify with certainty what prompted these discussions and what provisions were relied upon to narrow the scope of the application.

Recommendation 12: See recommendation 8 above.

Recommendation 13: For clarity and transparency, Treasury is encouraged to maintain contemporaneous file notes in relation to any reasoning resulting in the negotiation of scope with access applicants.

4.6 GIPA training, support and communication

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	Mandatory training upon commencement of employment within the IAG Unit in place
b Frequency of training provided to officers responding to GIPA requests for information over the last 2 years	Mandatory e-learning GIPA module (every 12 mths), mandatory 'High Intensity Information Training (HIIT) within month of employment (all Treasury staff) in place
c Frequency of communications provided over the last 2 years to officers performing GIPA functions under delegation regarding GIPA policies/guidance	Advice regarding amendments to the GIPA Act circulated to Treasury's Extended Leadership Team (Senior Executives) (29/11/2018)
d Frequency of communications provided over the last 2 years to officers about understanding requirements and	Case managers receive 'JADE' alerts

Criterion	Result
responding to GIPA requests for information	

Comments, findings and recommendations

Comment: Treasury advised the IPC that they are actively promoting and engaged in a culture of clear understanding of GIPA obligations and what is required to support this. The IPC was advised that the Deputy Secretary encourages staff to attend and participate in the internal ‘High Intensity Information Training’ (HIIT), which looks at the GIPA process in more detail, leading by example by ensuring that it is a priority. All Treasury staff are required to attend HIIT in the first three to six weeks of on-boarding.

New staff members to the Information Access Unit are additionally required to undergo the Crown Solicitor’s Office GIPA training courses, both standard and advanced. IAG Unit case managers also receive alerts through ‘JADE’, a web based database with decisions of Australian and International Courts and Tribunals and Australian legislation, in order to review relevant cases and prepare summaries for resource use and discussion at weekly meetings.

All Treasury staff are required to complete mandatory GIPA training via an e-learning module during their on-boarding process. In addition there is an ongoing requirement to complete this e-learning module as a refresher every 12 months which is managed through internal training procedures under the direction of the Director of Risk.

Observation: Following the significant legislative changes to the GIPA Act in November 2018, the Executive and Ministerial Services Branch provided advice to Treasury’s Extended Leadership Team, which comprises all Senior Executives across the Department. The email to the Extended Leadership Team included a summary of key changes and attachments with the Parliamentary Highlights summary for the relevant sitting period which advised the passage of the amendments and a further summary note with explanations as to the impact of the amendments on Treasury. There was no evidence available to the audit that operational staff received any communication updates regarding these amendments.

Treasury employs a weekly report circulated to the Department Secretary and Chief of Staff to communicate particulars of access applications on hand and the outcomes and details of information released for finalised applications. In addition, notification of external reviews is provided directly to the Chief of Staff.

Treasury has demonstrated a history of responsiveness to changes in GIPA support requirements as evidenced by their engagement of the Crown Solicitor’s Office in developing systems, processes and templates to facilitate their GIPA practices. In addition, Treasury has implemented a comprehensive GIPA training suite and appear to be promoting a culture of integrating practices and initiatives with sufficient training budget allowances and adjustments in resourcing as required. The audit observed only minor training adjustments that may be required to more effectively facilitate the current search process as discussed under section 2.4 of this report.

Recommendation 14: Treasury to promote training to staff who may be requested to undertake a search in response to an access application request (refer to Recommendation 10 above).

Recommendation 15: Treasury to ensure appropriate and timely communication of legislative changes and NCAT decisions to assist operational staff.

5 Conclusions and recommendations

5.1 Conclusions

This audit was informed by:

- IPC data and information including reviews and complaints
- Treasury 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 20 and 22 May 2019.

In summary, this audit has identified:

- A high level of engagement with the GIPA Act and active promotion of its purpose
- A comprehensive training program targeted to functional responsibilities
- Clearly documented processes to facilitate compliance
- Opportunities to improve processes to support compliance in respect of search requirements
- Instances of the absence of documented communication with applicants at junctures reflective of statutory events and requirements

5.2 Recommendations

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

Recommendations	
Recommendation 1	Treasury is encouraged to actively promote the location, and circulate a copy of the delegation instrument, to all staff within the Information Access and Governance (IAG) unit on commencement of employment and at any time in which the delegation instrument is updated.
Recommendation 2	A key objective pursuant to section 3 of the GIPA Act is to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information. Treasury is encouraged to consider reviewing the procedure of actions occurring on prescribed days so as to expedite decisions where possible.
Recommendation 3	Treasury is encouraged to apply a consistent approach to the document management for all procedural templates and guidance materials.
Recommendation 4	Treasury to promote the need to maintain contemporaneous file notes where relevant to a GIPA access application through inclusion in training, and relevant documents. This is to ensure that any correspondence in relation to an application is captured and preserved for reference as relevant to the drafting of any notice of decision.
Recommendation 5	Treasury is encouraged to ensure application of its Retention and Disposal Policy and Procedure to notices of decision and other contemporaneous decision related working documents to ensure transparency and efficiency in decision making.

Recommendations	
Recommendation 6	Treasury review by 27 September 2019, section 4.1 of the Procedure for Managing Access Applications under the <i>Government Information (Public Access) Act 2009</i> document to reflect section 89 of the GIPA Act in relation to rights for review by the Information Commissioner.
Recommendation 7	Treasury to promote by 27 September 2019, compliance with section 51(2) of the GIPA Act by instituting processes to track timeframes for receipt and issue acknowledgments of validity within 5 working days of receipt of an access application.
Recommendation 8	Treasury review by 27 September 2019, its compliance with the requirements of section 126 of the GIPA to provide clarity for applicants in respect of their contact with <i>an officer of the Agency to whom enquiries can be directed in connection with the decision or other action</i> .
Recommendation 9	Treasury to update by 27 September 2019, its templates used for search terms to include a due date for return of the search by Business Area Directors.
Recommendation 10	Treasury to promote training to key personnel (including Business Area Directors) regarding reasonable searches and identification of search terms from access applications to ensure consistency in the application of search terms.
Recommendation 11	Treasury to consider the development and documentation of an escalation protocol to enhance management of non-response to search requests. Ideally, the Executive Director responsible for information access should be provided with a report of all instances of non-response.
Recommendation 12	See recommendation 8 above.
Recommendation 13	For clarity and transparency, Treasury is encouraged to maintain contemporaneous file notes in relation to any reasoning resulting in the negotiation of scope with access applicants.
Recommendation 14	Treasury to promote training to staff who may be requested to undertake a search in response to an access application request (refer to Recommendation 10 above).
Recommendation 15	Treasury to ensure appropriate and timely communication of legislative changes and NCAT decisions to assist operational staff.

5.3 Monitoring

The IPC will continue to assist Treasury as it adopts these recommendations and request a report back regarding implementation by 1 November 2019.

6 Audit chronology

Date	Event
15 April 2019	IPC Notification of audit to NSW Treasury in accordance with section 22(1) of the GIIC Act (requesting commencement in May 2019)
18 April 2019	Correspondence from Treasury responding to audit notification
20 - 22 May 2019 inclusive	Conduct of audit by IPC
12 July 2019	Provision of draft compliance report to Treasury (requesting response to the IPC by 26 July 2019)
18 July 2019	Secretary, NSW Treasury response to draft compliance report
1 August 2019	Provision of final report to the Secretary, NSW Treasury

7 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 126 – Requirements for notices given by agencies
- Schedule 1 – Information for which there is conclusive presumptions of overriding public interest against disclosure