



External review by the Information Commissioner

If you are dissatisfied with a government agency's decision about releasing information, you can apply to the Information Commissioner to review the decision.

What decisions can be reviewed?

The *Government Information (Public Access) Act 2009* (GIPA Act) lists the types of decisions¹ a government agency may make in response to an access application that the Information Commissioner can review. These are:

- (a) a decision that an application is not a valid access application
- (b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- (c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- (d) a decision to provide access or to refuse to provide access to information in response to an access application
- (e) a decision that government information is not held by the agency
- (f) a decision that information applied for is already available to the applicant
- (g) a decision to refuse to confirm or deny that information is held by the agency
- (h) a decision to defer the provision of access to information in response to an access application
- (i) a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- (j) a decision to impose a processing charge or to require an advance deposit,
- (k) a decision to refuse a reduction in a processing charge

- (l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- (m) a decision to include information in a disclosure log despite an objection by the access applicant (or a decision that the access applicant was not entitled to object).

Who can apply to have a decision reviewed?

Both the person applying for government information and a person who objects to the release of that information can apply to have the agency decision reviewed by the Information Commissioner.

If you are the person applying for access to information, you do not have to have an internal review of the decision by the agency before asking the Information Commissioner to review it.

If you are not the person applying for the information (i.e. you are a third party), you **must** seek an internal review before applying for review by the Information Commissioner, unless that option is not available to you.² For example, where the Principal Officer of the agency had made the decision in response to an access application, or where another party, either the access applicant or another third party has already sought an internal review of **that** decision.

What is the timeframe for seeking a review by the Information Commissioner?

You have 40 working days from the time the decision is given to you, to ask for a review by the Information Commissioner.³

A working day is defined as any day that is not a Saturday, a Sunday or a public holiday.⁴

¹ Section 80 GIPA Act

² Section 89(2) GIPA Act

³ Section 90 GIPA Act

⁴ Clause 1, Schedule 4 to the GIPA Act

The close down for Christmas/ New Year is not excluded from the meaning of working day, so that only those days in the close down period that are Saturdays, Sundays or public holidays are excluded from working days for the purposes of calculating time in the GIPA Act.

There is not a provision in the GIPA Act that enables the Information Commissioner to accept applications out of time.

The approach to the calculation, of whether your application has been made within time by the IPC, will be based upon considering the time limits under the GIPA Act.⁵

What if there was a delay in me receiving the notice or I did not receive the notice?

Where the notice of decision by the agency is 'given' to you by post, unless there is evidence to show something different, the notice will be considered as given when the notice is posted to you by the agency.

Calculating time commences on the first working day after the notice is given.

What does it cost for the Information Commissioner to conduct a review?

A review by the Information Commissioner is free.

How can I request a review?

- Fill in the "GIPA reviews and Complaints" form on our website
- Telephone us
- Write to us
- Come to the IPC office

If you request a review by telephone, or in person, the IPC may ask you to complete a GIPA reviews and complaints: application form. We can help you fill out the form if you would like us to.

What should be included with a request for review?

You should briefly outline the facts of your application, and include (where applicable) a copy of all relevant correspondence between you and the agency.

For example:

- your access application
- the agency's notice of decision about your application

- your internal review application (if you made one)
- the agency's decision on your internal review request (if you received one).
- Please see the [Form: Application for External Review by the Information Commissioner](#) for more details.

What will the Information Commissioner do?

- When we receive a review application we will:
- contact the applicant to confirm that we have received the application and to give a reference number for the review;
- notify the agency that made the decision that we have received an application for review;
- conduct a preliminary assessment in order to determine whether we have jurisdiction, i.e. if we can accept a request for review. In making this preliminary assessment we may make inquiries or ask either party (applicant or agency) to provide us with information or copies of documents;
- allocate the review request to one of the IPC intake and review or investigation & review officers;
- notify the applicant and the agency when the review is allocated and ready to be progressed.

The officer conducting the review may need to gather additional information about the agency's decision. This may include obtaining information from both the applicant and the agency that made the decision.

The review officer will review the decision made by the agency and decide whether that decision was justified in accordance with the requirements set out in the GIPA Act.

The review officer will look at a range of factors. The process that the agency followed and the agency's decision in order to form a view about whether the agency correctly followed and applied the provisions of the GIPA Act.

If deemed necessary, the review officer may ask for further information or a submission from either or both parties.

The review officer will write a report outlining the Information Commissioner's view and any recommendations for the applicant and/or agency.

In some cases, the review officer may contact the applicant and the agency and provide them with a provisional view.

⁵ Sections 90 and 126 GIPA Act

A provisional view is only provided if the IPC needs to check facts or seek submissions. A provisional view is not the Information Commissioner's final view and report. It is used to provide an opportunity for us to ask additional information or to check facts if this is required.

We will usually ask that any additional information be provided within ten (10) working days.

Once the review officer is satisfied that all relevant information has been properly considered, a final review report will be sent to both parties.

Some final review reports are published on the Information and Privacy Commissioner's website. However, consent will be obtained from the applicant and any third party before we publish any personal information online.

If an applicant or an agency disagrees with the final review report or recommendations made by the Information Commissioner, they may seek a review with the NSW Civil and Administrative Tribunal (NCAT).

What if I have a question about my review?

You will be provided with the name of the review officer handling your case at the time the file is allocated. Please feel free to contact them via our freecall number 1800 472 679 if you have any questions throughout the review process.

What if I have other concerns about an agency?

See our complaint form: [Form: Complaint to the Information Commissioner](#). You have the right to complain to the Information Commissioner about how an agency exercises its functions under the GIPA Act.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au