



information
and privacy
commission
new south wales

The background of the cover features several thick, overlapping, curved bands in various shades of blue and purple, creating a dynamic, abstract pattern.

annual report **2010-11**

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Our business hours are 9am to 5pm Monday to Friday (excluding public holidays).

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If you are deaf or have a hearing or speech impairment, you can call us through the National Relay Service (NRS) on 133 677 or if you would like the assistance of an interpreter, call us through the Translating and Interpreting Service (TIS) on 131 450.

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Letter to the President and Speaker

The Hon Don Harwin MLC
President Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

The Hon Shelley Hancock MP
Speaker Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

31 October 2011

Dear Mr President and Madam Speaker

In accordance with section 9A of the *Annual Reports (Statutory Bodies) Act 1984*, section 36 of the *Government Information (Information Commissioner) Act 2009*, and Part 7A, section 61A of the *Privacy and Personal Information Protection Act 1998*, I am pleased to present the first annual report of the Information and Privacy Commission.

On 28 September 2010, the NSW Parliament passed the *Privacy and Government Information Legislation Amendment Bill 2010 (NSW)*. The Bill amended both the *Government Information (Public Access) Act 2009* and *Privacy and Personal Information Protection Act 1998* to bring the Information Commissioner and Privacy Commissioner together under a single office. The Information and Privacy Commission was established on 1 January 2011.

This report provides an account of the work of the Office of the Information Commissioner, the Office of the Privacy Commissioner and the Information and Privacy Commission for the year ending 30 June 2011.

Yours sincerely



Deirdre O'Donnell
Information Commissioner
Information and Privacy Commission

Commissioner's overview

On 1 January 2011 the Office of the Information Commissioner merged with Privacy NSW to become the Information and Privacy Commission (IPC), marking a new stage in the service we offer the people of New South Wales.

The creation of the single office gave effect to the New South Wales Law Reform Commission's recommendation (set out in its 2009 report number 125) that a single office should administer legislation about privacy and access to government information.

Through this 'single door' model, service to the public and government agencies is at the centre of the IPC's operations. One of the key things we will deliver in accordance with the *Privacy and Government Information Legislation Amendment Act 2010* is a common point of contact for the public to bring questions or complaints about matters to do with privacy or access to government information. We will also be providing coordinated training, advice and assistance to agencies and individuals about our legislation.

As an organisation the IPC has committed itself to striving to make things easier for the public and agencies. We aim to be helpful in our approach and to ensure our expert advice or the redress we offer is of the highest quality. The unified perspective of the IPC will lead to us developing more targeted assistance that gives prominence to the areas of tension and overlap between privacy and access, reflecting the competing priorities experienced by agencies as they respond to requests for information, while appropriately respecting people's personal information. Our aim is to focus on making our services relevant to the situations agencies face on a daily basis. This will enhance our ability to make a useful contribution in the public interest.

The IPC model adopted by New South Wales differs from comparable regimes in that it has two independent champions, both concerned with transparency and holding government accountable. The Privacy Commissioner and the Information Commissioner will consult and collaborate, but at the end of the day each is responsible for their own legislation and for championing their specific mandate in the public interest.

This annual report deals with the first six months of the Information and Privacy Commission. In addition, it includes the Information Commissioner's report on



the work and activities of the OIC and the report of the acting Privacy Commissioner on the operation of the *Privacy and Personal Information Protection Act 1998* and the privacy legislation for the reporting period 1 July 2010 – 30 June 2011.

I would like to thank every member of staff of the IPC for their dedication and commitment during the transition to our new merged organisation. At the time of preparing this report the Attorney, the Hon Greg Smith SC, announced the appointment of the new Privacy Commissioner for NSW, Dr Elizabeth Coombs. I warmly welcome Dr Coombs and look forward to working with her. I also acknowledge the exceptional contribution of acting Privacy Commissioner John McAteer, who has guided the Privacy team since October 2009, and will do so up until Dr Coombs' commencement in early November 2011.

A handwritten signature in black ink, appearing to read 'Deirdre O'Donnell'. The signature is fluid and cursive, written on a white background.

Deirdre O'Donnell
Information Commissioner
Information and Privacy Commission

About the IPC



The Information and Privacy Commission (IPC) began operations on 1 January 2011. The IPC was established by the NSW Parliament as a single oversight body to advocate and enforce rights to government-held information and privacy in NSW, and to assist NSW government agencies to fulfil their obligations under information access and privacy laws.

The agency incorporates the Office of the Information Commissioner (OIC) and the Office of the Privacy Commissioner (formerly Privacy NSW).

Who we are and what we do

The IPC is an independent statutory authority that administers New South Wales legislation dealing with privacy and access to government information.

The IPC's role is to provide consistent information and advice, and coordinated training for agencies and individuals on privacy and information access matters.

The Information Commissioner and the Privacy Commissioner act as champions for their legislation. In addition, the Information Commissioner heads the IPC and is responsible for managing its budget, overseeing its administration and staff.

The Information Commissioner reports to the NSW Parliament on the operation of the *Government Information (Public Access) Act 2009* (NSW) and the *Government Information (Information Commissioner) Act 2009* (NSW). The Privacy Commissioner reports to Parliament on the operation of the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

IPC launch a milestone for NSW

The launch of the IPC in February marked a significant development for information access and privacy rights in New South Wales.

Speaking at the launch event, Information Commissioner Deirdre O'Donnell said the IPC would benefit the people of NSW by promoting greater access to government information, while championing the privacy of individuals.

"Citizens in a robust democracy have the right to expect government agencies to be open and accountable," Ms O'Donnell said.

"Equally, they have the right to demand that those agencies holding their personal and health information, whether government agencies or private organisations, respect their privacy and do not abuse their trust."

Ms O'Donnell said government agencies across the state would also benefit.

"The IPC will help government agencies meet their legislative responsibilities by providing consistent information about the protection of personal information and the disclosure of government-held information," she said.

Australian Information Commissioner John McMillan and acting NSW Privacy Commissioner John McAteer also spoke at the launch, attended by IPC staff and a number of official guests including Australian Privacy Commissioner Timothy Pilgrim, members of the Administrative Decisions Tribunal and representatives of the Australian Law Reform Commission.



Acting NSW Privacy Commissioner John McAteer, NSW Information Commissioner Deirdre O'Donnell, Australian Information Commissioner John McMillan, ADT President Judge Kevin O'Connor AM, Australian Privacy Commissioner Timothy Pilgrim and Australian Law Reform Commission President Professor Ros Croucher.

Our legislation

The IPC is responsible for the following legislation:

- *Government Information (Public Access) Act 2009* (NSW) (GIPA Act)
- *Government Information (Public Access) Regulations 2009* (NSW) (GIPA Regulations)
- *Government Information (Information Commissioner) Act 2009* (NSW) (GIIC Act)
- *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act)
- *Privacy and Personal Information Protection Regulation 2005* (NSW)
- *Privacy Code of Practice (General) 2003* (NSW)
- *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act)
- *Health Records and Information Privacy Regulation 2006* (NSW)
- *Health Records and Information Privacy Code of Practice 2005* (NSW)

Legislative changes

The GIPA Act came into force on 1 July 2010.

Other legislative changes included:

- the *Government Information (Public Access) Regulation 2009* (NSW) (GIPA Regulation)
- the *Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009* (NSW)
- the introduction of the *Privacy and Government Information Legislation Amendment Bill 2010* (NSW).

The Information Commissioner's powers

The Office of the Information Commissioner (OIC) was established in July 2009 as part of the new right to information system and is headed by an Information Commissioner.

The role of the Information Commissioner is to promote public awareness and understanding of right to information in NSW, and provide information, support, advice, assistance and training to agencies and the general public. The OIC also has the power to review decisions made by government agencies and to deal with complaints.

The Information Commissioner monitors agencies' functions and may report to the Minister responsible for the GIPA Act about proposals for legislative or administrative change.

When required, the Information Commissioner can issue guidelines to assist agencies and the public on:

- public interest considerations in favour of disclosure
- public interest considerations against disclosure of government information
- agencies' functions
- the public's rights, including rights of review
- publication guides, including model publication guides, or
- reductions in processing charges.

The Information Commissioner has broad powers to investigate agencies and can compel agencies to provide information in the conduct of enquiries.

The Information Commissioner and the NSW Ombudsman signed a memorandum of understanding on 11 August 2010 outlining the arrangements for the exchange of information and consultation between the agencies in accordance with the *Ombudsman Act 1974* and the *Government Information (Information Commissioner) Act 2009* (GIIC Act).

The Privacy Commissioner's powers

The Office of the Privacy Commissioner NSW, previously Privacy NSW, was established in 1999 under the *Privacy and Personal Information Protection Act 1998 (NSW)* (PPIP Act).

The Privacy Commissioner assists with resolving complaints, protects and enhances the privacy rights of the NSW community, and ensures the privacy principles set out in the legislation are upheld.

The office is committed to educating the people of NSW about the meaning and value of privacy in their day-to-day lives by:

- advising individuals, government agencies, businesses and other organisations on how to ensure that the right to privacy is protected
- researching developments in policy, law and technology that may impact on privacy, and making reports and recommendations to relevant authorities
- answering enquiries and educating the community about privacy issues
- advising people of possible remedies for breaches of their privacy
- receiving, investigating and conciliating complaints about breaches of privacy
- appearing in the Administrative Decisions Tribunal and advising on privacy law in privacy cases
- overseeing NSW government agency reviews of alleged privacy breaches.

Our governance

The IPC is an independent statutory authority that does not report to a Minister. Instead the Information Commissioner and the Privacy Commissioner report directly to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission, which oversees the functions of the Information Commissioner and Privacy Commissioner. However, the committee cannot:

- investigate a matter relating to particular conduct
- reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint or matter of conduct
- reconsider the findings, recommendations, determinations or other decisions the Information Commissioner or the Privacy Commissioner has made in relation to a particular investigation, matter or complaint.

Our vision

Our vision is to promote government transparency and accountability through better access to government information, balanced with a commitment to general privacy rights for the people of NSW.

The IPC is committed to:

- educating the people of NSW about access to and disclosure of government information
- encouraging an open government culture and ensuring compliance with right to information laws
- defending the public's right to information
- educating the people of NSW about the meaning and value of privacy in their day-to-day lives and how to protect and enhance their privacy
- promoting the adoption of world's best practice by all holders of personal data, particularly NSW government agencies, thereby promoting an increased level of trust in the community, especially between people and their government.

Our mission

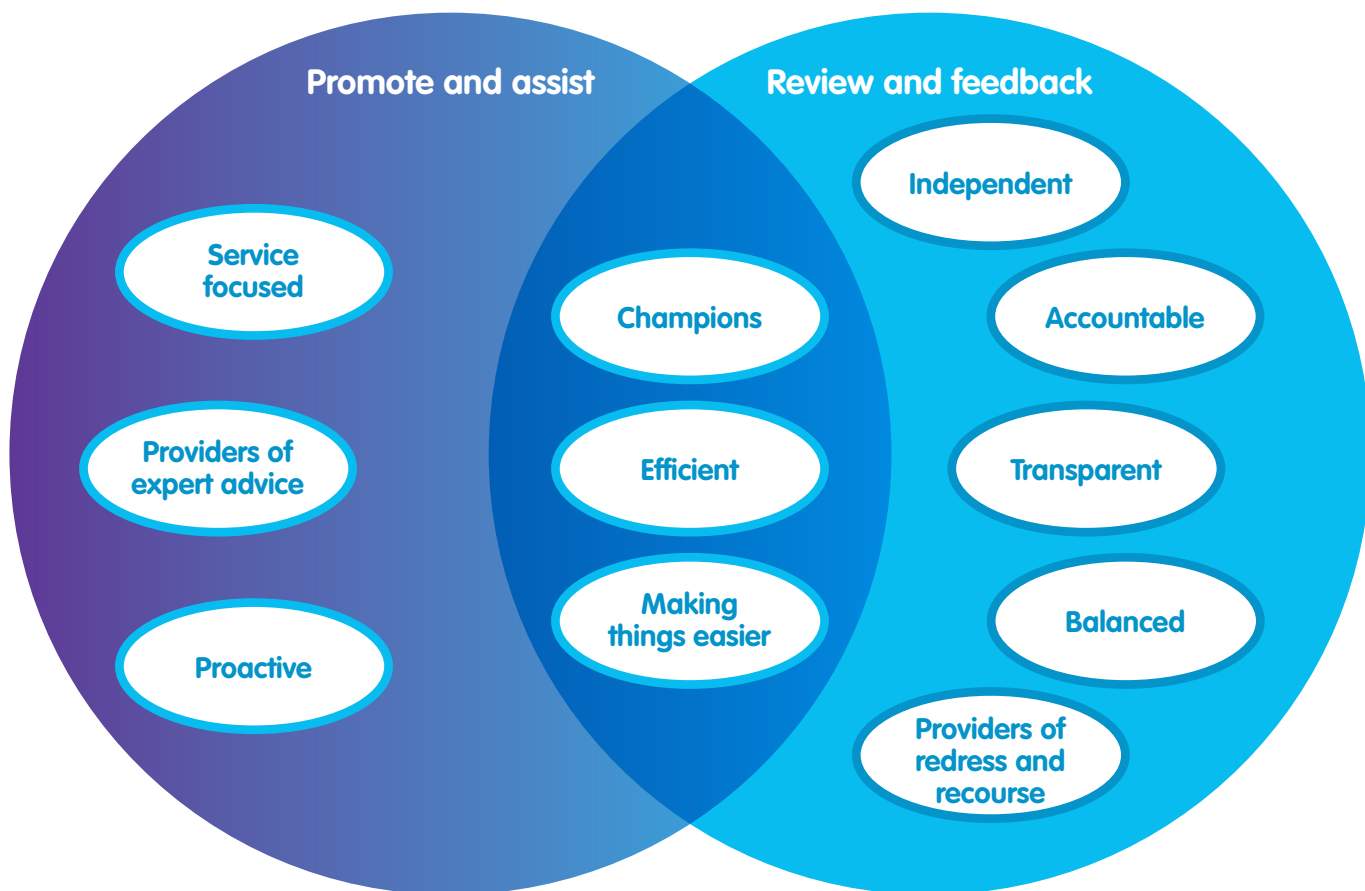
Our mission is to ensure that the objectives of the NSW information access and privacy legislation are achieved by:

- promoting information access and privacy legislation, and educating the community and agencies about peoples' rights to information and privacy
- assisting government, business and the public to understand and use information access and privacy legislation
- reviewing agency decisions, investigating and conciliating complaints, and monitoring agency performance
- providing feedback about the legislation and developments in the law and technology relevant to the legislation.

“Our vision is to promote government transparency and accountability through better access to government information balanced with a commitment to general privacy rights for the people of NSW.”

Our values

The diagram below sets out our values.



About the IPC

Our service commitment

The IPC's service charter says staff will:

- be courteous and professional
- listen to you
- treat you fairly and with respect
- respond to you promptly
- keep you informed of how your enquiry, complaint, investigation or review is progressing
- provide you with accurate information in a way that you can understand
- where appropriate, investigate your matter and tell you of the outcome
- tell you when no further action will be taken and the reason why
- respond to your feedback to improve our services
- respect your privacy.

Our service standards

Staff will make every effort to:

- greet you at the counter in a friendly manner
- answer your call and aim to resolve your enquiry on the same day
- answer your email within five working days
- resolve enquiries at the first point of contact
- resolve 80 per cent of requests for assistance in 60 working days, and the remainder in 120 working days
- publish information that is useful and easy to understand
- provide access to an interpreter where needed.



Our stakeholders

Our stakeholders include the public, non-government organisations, small businesses trading in NSW, all health service providers in NSW (state, private, GPs), government agencies and their staff, local councils, state-owned corporations, the media, the Parliament of NSW, Ministers and their staff, the Parliamentary Joint Committee that oversees our office, independent bodies, the NSW Ombudsman and other Information and Privacy Commissioners.

Our business plan

In our first six months of operation, our focus has been on laying the foundations to deliver:

- consistent information and advice, including coordinated training for the public and agencies on privacy and information access legislation, as outlined in our communications strategy and our education and promotion strategy
- a common point of contact through a single office, the **1800 IPC NSW (1800 472 679)** telephone number and the **www.ipc.nsw.gov.au website**
- administrative and operational efficiencies through shared corporate services between the OIC and the Office of the Privacy Commissioner.

Measuring our success

In its first six months, the two offices co-located and developed a model for shared corporate support covering administration, finance, information technology, records management, audit and risk management, and client services.

To distinguish the new agency, an IPC brand was developed to harmonise with the established OIC brand. We also developed a new brand for the Office of the Privacy Commissioner.

The IPC is building on the work the OIC commenced in the area of shared outreach, training and communications by extending these initiatives to cover privacy issues. Our initial focus has been on providing advice and assistance on those areas where privacy and access to government information overlap and where there may be some uncertainty.

Our strategic goals

In setting up the IPC, we have focused on four goals which are common to the Commissioners' mandates covering both privacy and access legislation.

Under each goal we have identified strategies to help us achieve these goals and measures to evaluate our performance.

Goal 1

Promote the legislation and educate the community and agencies about citizens' privacy and access rights

Strategies:

- develop a clearly articulated communication and stakeholder engagement strategy to cover the range of identified stakeholders
- establish and maintain positive and productive relationships with agencies
- engage with communities to appropriately target programs for vulnerable groups
- develop appropriate education, promotion and training materials.

Performance measures:

- the publication of a communication and stakeholder engagement strategy with regular reports of achievements against it
- agencies readily contact the IPC to discuss issues and concerns, and work together to find solutions
- relationships and regular contact are established with various communities, particularly with vulnerable groups within those communities
- stakeholder feedback tells us that information materials are helpful and appropriate, and staff are approachable and helpful.

About the IPC

Our strategic goals (continued)

Goal 2

Assist government and the public to understand and use the legislation

Strategies:

- develop and deliver targeted training
- develop and issue guidelines to assist agencies and the public on specific matters as they arise
- publish and keep updated resources such as knowledge updates, fact sheets, brochures and guidelines that will assist in understanding and use of the legislation.

Performance measures:

- training is well received and feedback tells us it was helpful and appropriate
- guidelines are published following appropriate and rigorous research
- resources are regularly reviewed and updated; feedback is sought on effectiveness and modifications are made to ensure resources are useful and accessible.

Goal 3

Review agency decisions, investigate and conciliate complaints, and monitor agency performance

Strategies:

- develop and implement efficient and effective review, investigation, conciliation and monitoring systems
- develop clear, precise, plain English templates for consistent communication with agencies.

Performance measures:

- developed systems function effectively, enhance the work of the office, and are understood by staff, agencies and the public
- the work of reviews, investigations and monitoring meets quality and timeliness standards
- communication of decisions and reports is easily understood by the target audiences.

Goal 4

Provide **feedback** about the legislation and developments in the law and technology relevant to the legislation

Strategies:

- provide effective mechanisms for agencies and the public to advise the IPC of their experiences with the legislation
- establish effective systems to monitor feedback and trends, and consult with relevant stakeholders to inform the Commissioners' feedback to Parliament on the effectiveness of the legislation
- develop and maintain productive relationships with information and privacy bodies in other jurisdictions to monitor and report on developments in law, policy and technology.

Performance measures:

- we hear often and easily from the public and agencies about their experiences
- we provide rigorous, evidence-based reports to Parliament on the effectiveness of the legislation
- we participate in cross-jurisdictional forums concerning information and privacy issues, and contribute to the public debate in these areas.

“At these events we are able to provide resources and advice to help members of the community understand their rights. It is also about making connections and networking with other agencies.”

The IPC goes public at Law Week celebrations

National Law Week celebrations in May gave the IPC an opportunity to raise public awareness about right to information and privacy issues.

The IPC joined 29 other agencies at an open-air legal expo held in Sydney's Martin Place on 16 May.

IPC Communications Officer Jill Bright helped organise the IPC display, which featured staff from the OIC and the Office of the Privacy Commissioner.

"This is the second year we have participated in this fantastic event, which provides us with a good platform for our staff to interact directly with members of the public," Ms Bright said.

"At these events we are able to provide resources and advice to help members of the community understand their rights. It is also about making connections and networking with other agencies."

In support of the event, Information Commissioner Deirdre O'Donnell and acting Privacy Commissioner John McAteer joined staff in Martin Place as they engaged with visitors to the event.

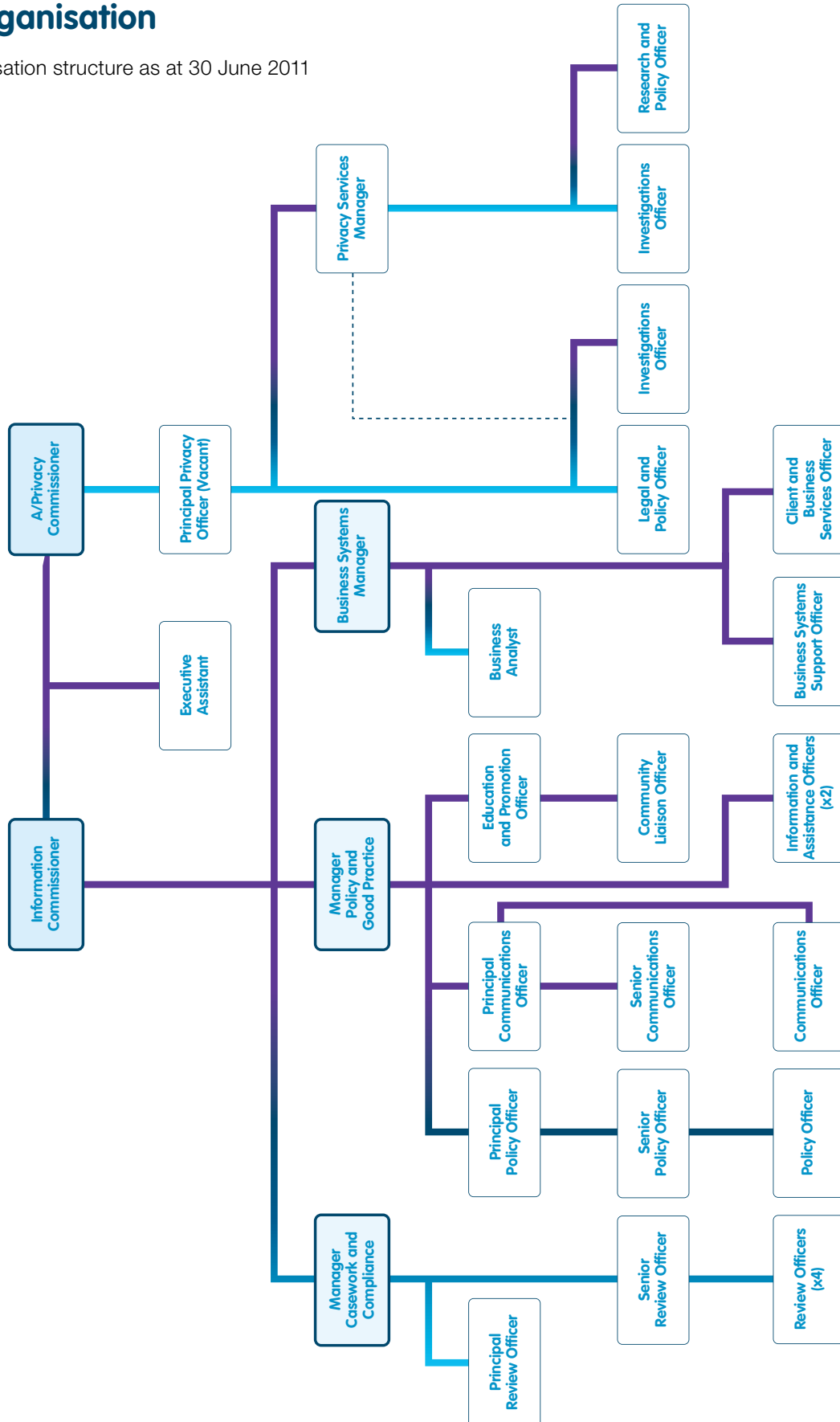


Susan Allan of Auburn speaks to Jill Bright, Christina Cruz and Kathryn Luis at the IPC display during Law Week.

About the IPC

Our organisation

IPC organisation structure as at 30 June 2011



Executive team

The Information Commissioner is appointed as an independent office holder under section 4 of the *Government Information (Information Commissioner) Act 2009* (NSW) (GIIC Act). Similarly, the Privacy Commissioner is appointed by the Governor on an independent basis under section 34 of the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act).



Deirdre O'Donnell

BA, Dip Ed, MBA, M Comm Law

Information Commissioner

Deirdre O'Donnell is New South Wales' inaugural Information Commissioner. Prior to taking up this role, for almost three years Ms O'Donnell held the position of Telecommunications Industry Ombudsman. From 2002 to 2007, she was the Western Australian Ombudsman, a position with wide investigative powers, including those of a Royal Commission.

Ms O'Donnell was also a State Records Commissioner, a member of the Western Australian Integrity Coordinating Group, and the Energy Ombudsman in Western Australia. In recognition of her work in that state, she received a public service medal in the Australia Day Honours for 2008. Ms O'Donnell has qualifications in arts, education and French, as well as an MBA and a Masters in Commercial Law from Melbourne University.



John McAteer

BA, MA, B Leg S, Grad Dip Legal Practice

Acting Privacy Commissioner

John McAteer was formally appointed acting New South Wales Privacy Commissioner on 1 July 2010, taking over the acting role from Maureen Tangney. Prior to this, he held the position of Principal Privacy Officer with Privacy NSW, a role he took up in October 2009.

From 2002 to 2009, Mr McAteer was at the Victims Compensation Tribunal, beginning as Solicitor for the Director and Compensation Assessor, followed by a five year period as Senior Solicitor Advocate of the Victims Compensation Fund, running appeals in the District Court and Supreme Court of NSW. In late 2006, Mr McAteer became Registrar and head of the Victims Compensation Tribunal.

Prior to 2002, Mr McAteer held positions with the NSW Ombudsman and the Supreme Court registry. He holds a Bachelor of Arts in Politics and Philosophy and a Master of Arts in Politics and Public Policy, a Bachelor of Legal Studies and a Graduate Diploma in Legal Practice.

About the IPC

Executive team (continued)



Shirley Southgate

BA LLB (Hons)

Manager, Policy and Good Practice

Ms Southgate commenced as manager of Policy and Good Practice in January 2010. She was admitted as a barrister and solicitor of the Supreme Court of Western Australia in 1996 and has worked in the private, community and government sectors in Western Australia and NSW. She was the principal solicitor at Kingsford Legal Centre at the University of NSW from 2005 to 2009, specialising in anti-discrimination law. Immediately prior to relocating to NSW, she was the managing solicitor of Client Services at Legal Aid Western Australia.



Linda Tucker

BA LLB PhD

Manager, Casework and Compliance

Dr Tucker commenced as manager of Casework and Compliance in May 2010 after five years running the Kingsford Legal Centre's employment law clinic at the University of NSW. Prior to this she was a barrister, an appeals advocate for the Refugee Legal Centre in the United Kingdom and an academic specialising in international environmental law. Before her legal career, Dr Tucker was a journalist in Sydney, Perth and the UK.



Darryl Brown

MIPA, JP

Business Systems Manager

Mr Brown has extensive experience in the NSW public sector, having worked with a range of large and small organisations, departments and agencies and on significant state events, including the Sydney Olympics in 2000 and World Youth Day in 2008. Mr Brown began with the IPC in April 2011, having transferred from a similar role with the NSW Anti-Discrimination Board. He has an accounting background and experience across a broad range of corporate services, possessing skills and experience in developing and implementing workplace information management systems.

Corporate services

The establishment of the IPC from the amalgamation of Privacy NSW with the Office of the Information Commission required the investment of corporate resources to address issues such as budgeting, payroll services, technology and the provision of business support.

As a consequence, three new business services support positions were created. The new positions were:

- Business Services Manager
- Business Analyst
- Business Systems Support Officer.

We have a service level agreement with the Department of Attorney General and Justice (DAGJ) for the provision of a broad range of shared corporate services.

Our office

The Information and Privacy Commission is located at level 11, 1 Castlereagh Street, Sydney. In October 2009, Privacy NSW, then a business unit of DAGJ, moved from Parramatta to the Sydney CBD location of the Office of the Information Commissioner.

Recruitment and selection

The IPC is committed to the recruitment and selection of staff on the basis of merit. Our recruitment and selection policy ensures a consistent, open, fair and equitable approach to recruitment and selection.

The merit selection process is used to select the person whose abilities, qualifications, standard of work performance and personal qualities best match those required to do the job.

We are in the process of updating position descriptions to comply with the NSW government capability framework. We adopted the NSW Government's TALEO recruitment management system to improve efficiencies in recruitment practices.

Professional development

Our staff are encouraged to keep up-to-date with developments in privacy and information access through continuous professional development. Staff completed 1229 hours of professional development representing an average of 41 hours per staff member (based on staff establishment of 30).

This development includes training delivered within IPC, participation in People Development courses at the DAGJ, specialist external training, attendance at conferences and seminars, and completion of mandatory continuing legal education and relevant e-learning programs.

Courses specifically developed and delivered within the IPC include:

- achievement planning
- business planning
- working effectively with interpreters
- an introduction to the GIPA Act.

Specific courses developed and delivered for managers include:

- giving and receiving feedback
- merit selection techniques.

To enhance our professional skills and promote collaboration, staff presented and participated in internal information sessions on:

- the IPC portal
- What is privacy?
- audit requirements
- finance and accounting
- first aid.

External presenters provided specialist training on:

- records management fundamentals
- media training
- how to recognise and manage mental illness and difficult behaviours
- certificate in corporate investigations.

About the IPC

Senior executive

The IPC has two senior executive positions, filled by the Information Commissioner Deirdre O'Donnell, who took up her role in May 2010, and the Privacy Commissioner position currently filled in an acting capacity by John McAteer.

The positions are statutory appointments and are listed under section 11A of the *Statutory and Other Offices Remuneration Act 1975*, not included in Schedule 2 for the *Public Sector Employment and Management Act 2002*. The remuneration for the Information Commissioner as at 30 June 2011 is provided below.

Executive remuneration

Position	Information Commissioner
Occupant	Deirdre O'Donnell
Total remuneration package	\$286,000
Value of remuneration paid as a performance payment	nil
Criteria used for determining total performance payment	n/a

The remuneration of the acting Privacy Commissioner is set by the Minister under section 35F(3) of the PPIP Act. Mr McAteer currently receives a gross salary of \$142,000 per annum.

Employee salary movement

Crown Employees (Public Sector – Salaries 2008) Award

The award provided for a four per cent salary increase from the first pay period on or after 1 July 2010 for the following classifications within the IPC:

- clerks
- departmental professional officers
- legal officers.

Statutory officers

Section 13 of the *Statutory and Other Offices Remuneration Act 1975* requires the Statutory and Other Offices Remuneration Tribunal (SOORT) each year to determine the remuneration to be paid to public office holders on and from 1 October in that year.

The SOORT made a determination to increase the remuneration paid to all public office holders by four per cent from 1 October 2010.

Enterprise industrial relations

The Information Commissioner established a Joint Consultative Committee comprising members of the Public Service Association, IPC staff and management. The committee met for the first time in March 2011 to discuss and review local issues and matters affecting staff.

Equal Employment Opportunity (EEO) and staff numbers

Employees by category 2010 – 11

Employees by category	2008–09	2009–10	2010–11
Statutory	n/a	1	2
Administration	n/a	9	19
Professional	n/a	5	8
TOTAL	n/a	15	29

Note: Employees by category includes all permanent and temporary staff, and excludes casual employees. Definitions of the categories are: administration (clerical and other officers), professionals (SES officers, librarians, DPOs).

Statistical information on EEO target groups

EEO group	Target	2008–09	2009–10	2010–11
Women	50%	n/a	87%	85%
Aboriginal and Torres Strait Islander people	2%	n/a	0%	0%
People whose first language was not English	20%	n/a	0%	18.4%
People with a disability	12%	n/a	0%	3.7%
People with a disability requiring work adjustments	7%	n/a	0%	3.7%

Code of conduct

The IPC has developed and published a code of conduct which sets out staff obligations and the required standards of ethical conduct. Staff have received training in the code and are also required to attend workplace ethics training as part of their induction.

Flexible work agreement

The IPC operates under the DAGJ Flexible Working Hours Agreement 2006, complemented by the use of DAGJ corporate human resources attendance and payroll management systems.

Health and safety services

As an employer, we are required to provide a safe work environment for our staff. We are subject to the provisions and responsibilities outlined in legislation such as the *Occupational Health and Safety Act 2000* as well as public sector occupational health and safety policies.

The management team has appointed first aid officers, established an injury register, organised emergency evacuation and first aid training for staff and included health and safety processes and procedures as part of the staff induction process.

Information and communication technology

We have made a number of enhancements to our GIPA online case management and reporting tool that have improved design, layout and functionality to make it easier for agencies to register a GIPA application.

A major initiative during the year was the introduction of an online events and survey resource to allow the IPC to better manage its events, roadshows and seminars. The software automates many of the registration tasks, and allows the IPC to send bulk email invitations, collect and confirm registrations, send reminders as well as collate feedback from surveys issued after each event.

To improve internal communications, the IPC implemented a “knowledge and resource centre” service at no cost to the agency. This was part of an initiative of Collaborate NSW to provide collaborative tools and resources for NSW government agencies. The IPC has created several collaboration sites to engage staff and stakeholders on a variety of projects.

In addition, we have installed a telephony call centre system to manage incoming calls and enquiries. We have also made significant progress on the implementation of an electronic document and records management system to facilitate better record-keeping and ensure that internal record-keeping processes meet the mandatory requirements of the *State Records Act 1998*.

Our capital works program for the coming year will allow us to implement a case management system that fully integrates with the record-keeping and telephony systems, ensuring case data is appropriately managed from the initial enquiry through to completion of the case matter.

Risk management

An Enterprise Risk Management Framework was developed in compliance with NSW Treasury policy TTP09-05.

Audit and risk committee

The IPC established an Audit and Risk Committee as required under the NSW Treasury policy for internal audit and risk management in the public sector. This committee, with its focus on an internal audit program and risk framework for the 2011 – 2012 year, will strengthen the IPC’s governance program and provide assurance to the Information Commissioner that our financial and risk management processes comply with legislative requirements.

The three independent members of the IPC audit and risk committee met for the first time on 15 June 2011, and approved an Internal Audit Manual and Charter for the IPC, as well as an Audit and Risk Committee Charter. The committee also reviewed and provided feedback on the IPC’s code of conduct, and other documentation relevant to IPC’s compliance with core NSW Treasury requirements.

We have made a number of enhancements to our GIPA online case management and reporting tool that have improved design, layout and functionality to make it easier for agencies to register a GIPA application.

IPC Internal Audit and Risk Management Statement for 2010 – 2011

I am of the opinion that the Information and Privacy Commission has internal audit and risk management processes in place that are, in all material respects, compliant with the core requirements set out in Treasury Circular NSW TC 09/08 *Internal Audit and Risk Management Policy*.

I am of the opinion that the Audit and Risk Committee for the Information and Privacy Commission is constituted and operates in accordance with the independence and governance requirements of Treasury Circular NSW TC 09/08. The chair and members of the Audit and Risk Committee are:

- Independent Chair – Carolyn Walsh (three-year appointment)
- Independent member – Garry Dinnie (three-year appointment)
- Independent member – Lyn Baker (three-year appointment).

These processes provide a level of assurance that enables the senior management of the Information and Privacy Commission to understand, manage and satisfactorily control risk exposures.



Deirdre O'Donnell
Information Commissioner
Information and Privacy Commission

31 October 2011

Insurances

The IPC's major insurance risks are the security of its staff, property and other assets, and the risk of work-related injuries, which may result in workers' compensation insurance claims. The IPC has its workers' compensation insurance with QBE Insurance (Australia) Limited, while GIO General Ltd provides cover for all other insurance policies.

Insurance cover for workers' compensation, property, liability and miscellaneous insurance is provided by the Treasury Managed Fund (TMF).

In 2011 – 2012, all existing insurance policies in the name of the Office of the Information Commissioner will be re-established in the name of the Information and Privacy Commission.

Consultants and contractors

The IPC commissioned the services of a number of consultants and contractors during the 2010 – 2011 financial year. None of these exceeded the \$50,000 reporting threshold.

International travel

Name:	John McAteer, acting Privacy Commissioner
Destination:	Auckland, New Zealand
Date:	6–8 December 2010
Reason:	to attend the 34th Asia Pacific Privacy Authorities forum
Cost:	\$828

GIPA Act compliance

Under section 125 of the GIPA Act, the IPC is required to report annually on our GIPA obligations.

Clause 7 of the Government Information (Public Access) Regulation 2009 (NSW) (GIPA Regulation) lists the information against which agencies must report. Schedule 2 of the GIPA Regulation provides tables for the reporting of statistical information about access applications.

Review of proactive release program

Under section 7(1) of the GIPA Act, the IPC must proactively release as much of our information as possible, providing there is no overriding public interest against disclosure of the information.

We have a proactive release program that involves reviewing our information as it is produced, and making it available online free of charge as soon as practicable if we consider there is no overriding public interest against disclosure.

Information that has been developed and proactively released includes:

- consultation paper 1 report: development applications and personal information on websites – issues for local councils
- fact sheets and knowledge updates
- IPC Strategic Plan 2011 – 2013
- OIC monthly newsletters
- OIC policy for responding to speaking requests
- Policy and Good Practice Business Plan
- requesting assistance from the OIC form
- reports on investigations the OIC has conducted
- reports on practical demonstrations of the GIPA case management and reporting tool
- reports to Joint Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission
- Right to Information Roadshow 2010 – 2011 presentation
- Right to Information Roadshow progress and review reports
- schedule of OIC community engagement events
- 2009 – 2010 OIC annual report.

About the IPC

Number of access applications received

The IPC received two valid access applications during the year.

The first sought access to personal information. The application was transferred to another agency under section 46 of the GIPA Act since our office did not hold the information.

The second application requested information relating to the OIC budget and external review timeframes. The applicant withdrew the application after agreeing to have it dealt with informally. In accordance with section 50(3) of the GIPA Act, written notice was given to the applicant confirming withdrawal of the application.

Our office refunded the \$30 application fee both applicants originally paid to make valid access applications under section 41 of the GIPA Act.

Number of refused access applications for Schedule 1 information

We did not receive any applications for the disclosure of information referred to in Schedule 1 (information for which there is conclusive presumption of overriding public interest against disclosure).

Statistical information about access applications made

See appendix one for statistical information about access applications made during the year.

Submission of GIPA report

Section 125(1) of the GIPA Act requires agencies to submit a copy of their GIPA annual report to the Minister responsible for the agency. A copy of our report will be submitted to the Attorney General, the Minister responsible for the GIPA Act.



Australian Information Commissioner John McMillian speaking at the launch of the IPC.

Statement of action taken to comply with PPIPA

The IPC's Privacy Management Plan outlines how we comply with the principles of the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) and the *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act).

Statistical details of any review conducted under Part 5 of PPIPA

No reviews were conducted under Part 5 of the PPIP Act during the reporting period.

Litigation

No litigation was carried out by or on behalf of the IPC during the reporting period.

External legal advice sought

The OIC sought external legal advice on the intersection and conflict between the *Copyright Act* (Cth) and the GIPA Act (NSW), and possible solutions to this conflict. Advice was sought from the Crown Solicitor's Office NSW and from Senior Counsel.

Agreements with Community Relations Commission

The IPC has no agreements in place with the Community Relations Commission.

Annual report production cost

The total cost for the production of 100 copies of the 2010 – 2011 annual report was \$17,289 (+GST). This included consultancy fees for design, photography and printing costs to comply with NSW Treasury requirements.

A bookmarked PDF of the report, including the text, appendices and the 2010 – 2011 audited financial statements is available on the IPC website:

www.ipc.nsw.gov.au.

“We have a proactive release program that involves reviewing our information as it is produced, and making it available online free of charge as soon as practicable if we consider there is no overriding public interest against disclosure.”



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Our performance – Office of the Information Commissioner

OIC consumer response

The majority of enquiries from state and local government agencies sought information and advice on the GIPA Act. In response, we helped agencies address their compliance obligations and provided advice on the requirements of the Act.

We also engaged with government agency staff and the public on the GIPA Act through presentations, roadshows and community outreach events. The feedback we received from stakeholders at these events has been invaluable in assisting us develop and refine resources to help agencies comply with the GIPA Act.

OIC achievements

The OIC is committed to supporting access to and disclosure of government information, encouraging an open government culture, and defending the public's right to information.

A comprehensive report of the OIC's activities and achievements is contained in the Performance Report section under the headings: Promote, Assist, Review and Feedback. These headings correspond to the roles of the Information Commissioner set out in section 17 of the GIPA Act.

The Policy and Good Practice team and the Casework and Compliance team carry out our promotional, assistance, review and feedback functions and activities. Some highlights of each of the team's operations during the year are provided below.

The OIC is committed to supporting access to and disclosure of government information, encouraging an open government culture, and defending the public's right to information.

Performance highlights: Policy and Good Practice team

Our Policy and Good Practice team is responsible for:

- promoting public awareness of the new right to information laws
- providing information, support, advice, assistance and training to agencies and the general public to encourage and facilitate a new culture of open government
- developing OIC Guidelines
- monitoring, reviewing and reporting on the functioning of the GIPA Act and the GIIC Act
- monitoring, researching and reporting on systemic inadequacies in the disclosure of government information
- assisting with the preparation of reports to Parliament.

The team is lead by Shirley Southgate, manager of Policy and Good Practice, and consists of three policy officers, three communications officers, two information and assistance officers, an education officer and a community liaison officer.

From July 2010 to January 2011 the team's focus was on supporting, assisting and advising agencies as they dealt with their first applications under the new GIPA Act. Part of the assistance provided included the development of a range of guidance materials for agencies, including three Commissioner's Guidelines. We also developed and refined our communications and education and promotion strategies to better communicate with various audiences.

The team developed and delivered a variety of training presentations to agencies and non-government organisations and accompanied the Information Commissioner on the regional Right to Information Roadshow.

In April 2011, the team recruited a policy officer and a community liaison officer. In the second half of the year, the team participated in the metropolitan Right to Information Roadshow; developed a comprehensive divisional business plan to guide its work; and began developing and implementing a community engagement strategy to provide relevant, accessible and helpful information to the public.

Our performance – Office of the Information Commissioner

Plans for 2011 – 2012

The team's work priorities for the coming year are to:

- undertake research and consultation into the fees and charges prescribed by the GIPA Act
- engage with identified disadvantaged and vulnerable communities to assist them to understand and exercise their rights to access information
- conduct community consultation and participation exercises to raise awareness of the GIPA Act, and to seek feedback about the legislation and the work of the OIC
- seek ongoing feedback from agencies about the operation of the legislation and suggestions for reform
- continue to develop and publish resources to assist agencies fulfil their functions under the GIPA Act
- develop and hold issue-specific seminars for agencies, based on feedback from surveys of agency training needs
- analyse and report on the first set of agency annual reports under GIPA
- conduct a review of open access information on agency websites. This will form the basis of comparative reports so trends of proactive disclosure can be identified, monitored and reported
- conduct an agency self-assessment survey to gather information about effective systems of information release, in particular open access and proactive release.

Performance highlights: Casework and Compliance team

Our Casework and Compliance team is responsible for:

- reviewing decisions of agencies under Part 5, Division 3 of the GIPA Act
- handling complaints made under section 17 of the GILC Act
- making representations about GIPA matters before the Administrative Decisions Tribunal (ADT)
- conducting investigations.

The team is managed by Dr Linda Tucker and was established with two senior review officers and two review officers. To cope with the increased workload, two additional permanent review officers and a temporary review officer were employed.

During the year our Casework and Compliance team experienced a sharp increase in the number of requests for assistance, reviews, complaints, investigations and matters before the ADT.

The team opened 400 cases and closed 217. Of those, 301 were requests to review agency decisions, 60 were complaints, 36 were ADT matters and three were investigations.

Our reviews and investigations are conducted with a view to encouraging and reinforcing cultural change towards openness by involving agencies in the process as much as possible while maintaining our independence.

The three major investigations completed were in response to complaints against Macquarie University, the Barangaroo Delivery Authority and the NSW Police Force's compliance with the GIPA Act. In addition to our report into the NSW Police Force we also provided specific training for that agency on the new right to information law. The three investigation reports are available on the OIC website: www.oic.nsw.gov.au.



Casework and Compliance Review Officer Tanya O'Dea, Principal Review Officer Natasha Case and Review Officer Sarah Bengler.

Plans for 2011 – 2012

Since January 2011, there has been a steady improvement in our response times to requests for reviews and assistance, complaints and investigations. In the coming year the team will increasingly apply alternative dispute resolution techniques to those matters it believes will benefit from this approach; as we aim to use our review processes to help both applicants and agencies work together to understand their rights and obligations.

The team's work priorities for the coming year are to:

- complete 80 per cent of requests for assistance within 60 working days and the remaining 20 per cent within 120 working days. We will provide monthly reports of numbers of files opened and closed on the website
- appear at ADT proceedings where we consider the Information Commissioner can provide assistance to the Tribunal in the interpretation and application of the GIPA Act
- initiate major audits where significant systemic or serious compliance issues are raised in external reviews or through proactive compliance and monitoring work
- initiate minor investigations where issues arising in external reviews indicate a need for a comprehensive response to agencies' approaches in dealing with applications for access to information
- collate precedents and develop templates to enhance the capabilities of the team to conduct reviews efficiently
- commence the development of a quality and accessible resource on legal interpretations of the GIPA Act
- develop a system for monitoring casework and policy developments for trends, issues and patterns in the application of the GIPA Act

- continue to develop our collaborative and coaching approach with Right to Information Officers at agencies, to assist them to apply the principles of the GIPA Act
- respond to poor agency decisions initially by providing comprehensive reports outlining the requirements of the GIPA Act and recommending how the requirements should apply in a particular case.

Information Commissioner's report on operations of GIPA Act

The Information Commissioner reports every six months on the operations and achievements of the OIC under section 17 of the GIPA Act to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission. The Commissioner's two reports to the Parliamentary Joint Committee published on 31 January 2011 and 14 July 2011 are available on the OIC website at www.oic.nsw.gov.au

A separate report will be provided to Parliament later in 2011 on the operation of the GIPA Act generally, across all agencies, in accordance with section 37 of the GIIC Act.

The team will increasingly apply alternative dispute resolution techniques to those matters it believes will benefit from this approach; as we aim to use our review processes to help both applicants and agencies work together to understand their rights and obligations.

Our performance – Office of the Information Commissioner

Performance report – how we are working to achieve our mission

Promote

One of the OIC's key priorities is to promote the state's right to information legislation to government agencies, the community and the media. Our promotional activities are the responsibility of the Policy and Good Practice team, supported by other members of staff.

During the year we widely promoted the benefits of the new information access system and the best ways to access government information, using communications and outreach activities, speaking engagements and Right to Information Roadshow events.

Communications and outreach activities

The OIC conducted a range of communications and outreach activities, such as:

- holding 11 regional Right to Information Roadshow events attended by 696 people from across NSW, followed by 13 Sydney metropolitan roadshow events attended by 705 people

- publishing eight editions of the OIC e-newsletter distributed to 1500 subscribers
- receiving 438,810 hits on the OIC website during the year
- distributing 60,000 copies of the OIC's public information brochure in 39 community languages to community centres and 21,000 copies of our public information brochure to community centres, community legal centres, non-government agencies and the public
- publishing a range of knowledge updates, on topics including: copyright and compliance with the GIPA Act, frequently asked questions to assist local councils interpret the copyright principles, and good practice for agencies creating disclosure logs
- publishing fact sheets on fees and charges and open access information
- issuing media releases and responses to media enquiries about the OIC and the GIPA Act that resulted in 80 stories published in newspapers, magazines and broadcast on radio, television and the internet.

Training assists community advocates

Helping disadvantaged and vulnerable clients gain access to government information was the aim of several information sessions held for community advocates this year.

IPC Education and Promotion Officer Justine McHarg delivered training to 12 advocates from the Multicultural Disability Advocacy Association (MDAA) in March 2011.

Ms McHarg focused on ensuring advocates in New South Wales were well-informed regarding the provisions of the GIPA Act.

"Many of us take our access to information for granted and don't realise just how difficult it can be for others, particularly people from non-English speaking backgrounds or those living with a disability," she said.

"A particular focus for the training considered aspects of the legislation that can assist the MDAA advocates

in helping their clients access government information, personal information, or decisions that may impact on them.

"The MDAA provides an invaluable service to the NSW community by assisting people from non-English speaking backgrounds or people with a disability, their families and carers to stand up for their rights. The OIC is committed to providing advocates with information designed to make their jobs easier."

MDAA Individual Advocate team leader Joan Gennery coordinated the training.

Ms Gennery said the training was informative and relevant to the advocates' work, providing them with a better understanding of how to help their clients access government information.

The IPC's Community Liaison officer Gabe Morahan is also working closely with community representatives throughout NSW to consult on issues and raise awareness of the information access and privacy rights and responsibilities of individuals and agencies.

Speaking engagements

The Commissioner and OIC staff delivered 61 presentations, speaking engagements and training sessions during the year.

They engaged with a broad range of stakeholders, including:

- frontline staff of government and non-government agencies, such as Law Access, Department of Education and Training TAFE Performance Unit, Environmental Defenders Office, Legal Aid (social workers), and the Administrative Decisions Tribunal (registry staff)
- metropolitan councils risk management group
- Directors General, executive teams and heads of agencies such as the Department of Human Services, Department of Services, Technology and Administration, NSW Health, NSW Housing and the Department of Environment, Climate Change and Water
- internal auditors and ombudsmen from Sydney and regional local councils
- Ministerial staff
- WorkCover NSW senior management group
- Government Chief Information Office executive council meeting
- Regional Development of Australia meeting of chairs and executive officers



IPC Communications Officer Jill Bright and Education and Promotion Officer Justine McHarg prepare information kits.

- Corruption Prevention Network
- Catchment Management Authorities business managers, and board members
- NSW Branch meeting of the Australian Society of Archivists
- Fairfax journalists
- Network Ten journalists.

Private companies, non-government agencies and community groups addressed included:

- Homeless Persons Legal Service
- Public Interest Advocacy Centre
- Multicultural Disability Advocacy Association
- Koori Men's Group
- Browns Nurses (an agency dedicated to working with elderly homeless people in the Sydney area)
- various legal firms and community legal centres
- Western Sydney Chinese Network meeting.

Conferences and seminars addressed included:

- Institute of Public Administration Australia NSW state conference
- Local Government web network conference
- Government Solicitors Continuing Legal Education Conference
- Local Government Managers Australia, Governance Conference "Conquering the Challenge of Change"
- NSW Legal Aid Civil Law Conference
- Complaint Handlers' Information Sharing and Liaison (CHISaL) seminars
- Second Annual Citizen Centric Service Delivery Conference, Canberra
- South Pacific Asian Conference (SOPAC): FOI reinvented – how it will change information controls, Melbourne
- Record-keeping Roundtable and NSW Branch of the Australian Society of Archivists panel discussion on the impact of WikiLeaks on the archives/records profession: "After WikiLeaks, is it all over for the Archives"
- Australian Government Solicitors Information Law Conference
- Local Government Managers Australia (LGMA) NSW Governance Gathering
- NSW Records Management Association of Australasia, Local Government Chapter
- Consumer Forum of Agency of Clinical Innovation.

The OIC continues to support and actively participates in the regular meetings of the Right to Information/Privacy practitioners' network.

Our performance – Office of the Information Commissioner

Right to Information Roadshow

A key objective for the OIC is to promote the state's right to government information legislation and educate the community and agencies about people's access rights by offering information, advice, assistance and training. During the year, the OIC organised a Right to Information Roadshow across regional NSW and metropolitan Sydney.

Regional roadshow

The Information Commissioner spoke at 11 regional centres across NSW. A total of 696 people attended the regional events with 599 people coming from government agencies and 101 attendees from the public and non-government agencies. Feedback provided by 65 per cent of attendees gave a high satisfaction level of 92 per cent.

Metropolitan roadshow

Following the regional roadshow, the OIC delivered 13 metropolitan Right to Information events across Sydney, from October 2010 through to March 2011.

Fourteen information sessions were specifically designed for government agencies, while 13 sessions contained more general information suitable for the public and non-government agencies. Some 705 people attended the metropolitan events, including 537 from government agencies and 168 representing members of the public and non-government agencies.

We received feedback from 69 per cent of attendees, 83 per cent of whom said they were highly satisfied with the information presented at the sessions. Evaluative reports on the Right to Information Roadshows are available on the OIC website: www.oic.nsw.gov.au.

Feedback from the roadshow and subsequent follow-up surveys indicated that a significant number of government agencies wanted more detailed information about how to apply GIPA in real-life situations. As a result, the OIC plans to develop and deliver a series of more specific seminars for government agencies on topics such as:

- applying the public interest test
- the overlap between information and privacy rights
- copyright and compliance with GIPA.

Plans are now underway to launch a bi-monthly seminar series in August 2011.

Right to Information Roadshow wins praise



Cecilia Quizon, Lynette Bentley and Lilly Daiwik from the Dust Diseases Tribunal attend the Sydney CBD Right to Information Roadshow.

More than 180 agency staff and members of the public attended the final sessions of the Right to Information Roadshow in Sydney CBD.

The Right to Information Roadshow was an eight-month initiative that enabled the Information Commissioner and other OIC staff to engage with officers from government agencies, community advocates, media representatives and members of the public to raise awareness about rights to information in New South Wales.

Project coordinator Karen Tyler said the roadshow began its regional leg in Newcastle in August 2010.

"It has since travelled across the state to raise awareness among members of the public and government agency staff about the right to information system in New South Wales," Ms Tyler said.

"During the regional and metropolitan roadshow events, we staged 47 information sessions for the public and agency staff in 24 locations.

"The entire project reached more than 1400 people across NSW."

Survey feedback has highlighted the success of the initiative, with more than 90 per cent of respondents indicating they were highly satisfied with the program.

Community engagement

To develop and strengthen our relationships with a diverse range of community groups, a new Community Liaison Officer (CLO) position was created in April 2011. The IPC's CLO, Gabe Morahan, actively engages with non-government and interagency groups and networks to promote awareness of the GIPA Act, provide assistance and targeted, culturally appropriate education and training to community workers and community groups as well as members of the public.

Since starting with the IPC, Ms Morahan has attended 11 community events including Sydney Homeless Connect, Seniors Expo Week, Aboriginal Information and Assistance days and Refugee events. She also attended interagency meetings with various multicultural and migrant workers and a number of Koori groups.

Community engagement is key for the IPC



Engaging with the NSW community on right to information and privacy issues is a key focus for the IPC's Community Liaison Officer Gabe Morahan (pictured).

Ms Morahan joined the IPC team in April and has since met with hundreds of people at a range of community events, such as Aboriginal community information days, seniors expos, migrant network meetings and events for homeless people.

"My job is to build relationships, build networks, educate people and work in consultation and partnership to access all communities," she said.

She is also seeking the help of the community in developing more targeted resources for specific groups.

NAIDOC Week was a busy time for the IPC with Ms Morahan and other IPC staff attending events throughout Aboriginal communities.

"We are really keen to learn more about what help Aboriginal people need to access information and to keep their personal information safe," she said.

"We're working in partnership with a number of Aboriginal communities to develop a plan so we can better engage with Aboriginal people.

"This will ensure we are giving Aboriginal communities the best possible service by raising awareness about how to access government information and how to protect their privacy."

Our performance – Office of the Information Commissioner

Assist

For the state's right to information laws to function effectively, access to government information must underpin all agencies' administrative practices, influencing record-keeping, technology, resource management and decision-making processes.

The Information Commissioner believes that by providing assistance to NSW government agencies, the OIC will lay a strong foundation for the cultural change within the public sector that will achieve greater and simpler access to government information for the public.

Both our Policy and Good Practice and Casework and Compliance teams play important roles in assisting our stakeholders by providing a wide range of information and resources to help agencies comply with the GIPA Act and enable the public to understand their right to access government information.

Enquiries

The OIC receives most of its enquiries from members of the public and government agencies by phone, email and over the counter. Our Information and Assistance officers answered more than 4300 enquiries from agencies and the public during the year. Some 87 per cent of these enquiries were by phone, with 11 per cent via email.

An analysis of the enquiries we received reveal that 55 per cent came from the public and 35 per cent from NSW government agencies, with local councils comprising 14 per cent with 290 enquiries. The remaining enquiries came from a range of non-government and private entities.

The Information and Assistance officers handled an average of 17 calls per day, resolving 94 per cent of matters on the same day. On average, 72 per cent of emails received were answered within our five-day target.

By providing assistance to NSW government agencies, the OIC will lay a strong foundation for the cultural change within the public sector that will achieve greater and simpler access to government information for the public.

Frontline staff meet high demand

The OIC's Information and Assistance Officers (IAOs) Christina Cruz and Liz Ryan provided expert assistance to members of the public and agencies this year, by phone, via email and over the counter. In this special feature, Ms Ryan shares their experiences over the past 12 months.

With more than 4300 enquiries coming into the OIC since the commencement of the GIPA Act on 1 July 2010, the IAOs were kept very busy.

More than half of these were from members of the public – a noticeable change from the enquiries received before the commencement of the GIPA Act. Hot topics included the role of the OIC, the best ways to access government information, and the steps to take if a request is refused.

Christina and I also helped members of the public with a range of information, such as contact numbers and application forms from agency websites. Questions from agencies ranged from general compliance with the GIPA Act to more complex issues, such as overlapping of the GIPA Act with other legislation.

We supported agency staff by providing feedback on amended publication guides, and are preparing to help agencies in relation to their annual reports over the next few months.

During the year, the IAOs identified issues that arose and provided feedback to the policy and casework teams. Identifying commonly asked questions led to the publishing of further FAQs, fact sheets and knowledge updates on the OIC website.



Information and Assistance Officer Liz Ryan advises a member of the public on information access issues.

We also used the opportunity created by the establishment of the Information and Privacy Commission to liaise with the Office of the Privacy Commissioner on questions that involved privacy concerns.

We're looking forward to continuing to provide an expert level of information and assistance to all of our stakeholders in the coming year.

Assisting agencies

Our Policy and Good Practice team provides specialist advice and training to agencies on specific aspects of the GIPA Act. Officers are available to attend presentations and speaking engagements on request.

Throughout the year, the team provided policy advice and input into other legislation that has implications for good practice in information management, and provided policy advice to other agencies.

The team also participated in regular meetings of the Right to Information/Privacy Practitioners Network and attended the Local Government Managers Australia (LGMA) NSW Governance Committee meetings.

Guidelines under the GIPA Act

To assist agencies, the Information Commissioner can issue guidelines to clarify the functions and interpretation of the GIPA Act. During the year, the following guidelines were issued:

- **guideline one:** for local councils. Guidelines for local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the GIPA Act (July 2010)
- **guideline two:** discounting charges – special benefit to the public generally. The guideline is designed to help local councils with the publication on their websites of personal information that is submitted to councils as part of the Development Application process. (March 2011)
- **guideline three:** local councils – personal information contained in development applications and what information should not be published on council websites (May 2011).

Guideline helps local councils with publishing personal information

The OIC's first consultation paper received a good response from local government, with more than half of NSW councils sharing their views on the publication of development applications (DAs) and personal information on websites.

Released in late 2010, the paper entitled *Development applications and personal information on websites – issues for local councils* was prompted by feedback from the local government sector and members of the public.

Senior policy officer Angel Casey said councils had raised concerns about the perceived conflict between releasing open access information under the GIPA Act and publishing personal information related to development applications online.

"Some members of the public were also concerned about having their personal details revealed through the DA publication process," Ms Casey said.

As a result of the feedback and comparative research of approaches taken by other jurisdictions, the OIC's policy team developed a new guideline for local councils in March 2011.

Principal policy officer Donna Hayward said the guideline helped councils effectively apply the public interest test to determine whether personal information associated with DAs should be published.

"Local councils collect and store a great deal of personal information as part of their everyday functions," she said.

"In particular, councils require a certain amount of personal information from people wishing to lodge or comment on development applications. We have produced this new guideline to ensure local councils have an appropriate level of guidance when applying the public interest test to determine whether or not to publish personal information.

"The guideline specifies certain types of information that should not be published due to its private nature."

A summary of the guideline has also been produced and features a checklist for local councils. The guideline and summary are available on the OIC website: www.oic.nsw.gov.au.

Training

The OIC developed a range of GIPA training material for frontline staff and managers. The training was customised to include agency-specific case studies and scenarios and was delivered in-house to the following agencies:

- NSW Public Trustee and Guardian managers
- NSW Police Force Information Access Unit
- Anti-Discrimination Board staff.

Feedback from 91 per cent of participants said they were highly satisfied with the training.

Online learning resources

The OIC developed a number of PowerPoint online learning modules to help inform the public about their rights, and agencies about specific responsibilities under the GIPA Act.

Resources available for the public include:

- Your rights to information are changing

Resources available for agencies include:

- Managing the public's new right to information
- The contract register and contract disclosures
- Managing the public's new right to information (local government supplement).

The presentations are available on the OIC website. We are currently investigating the feasibility of providing interactive and 'just-in-time' learning solutions to further assist our stakeholders.

GIPA case management and reporting tool

More than 150 agencies are now registered to access the GIPA case management and reporting tool, which is designed to manage formal access applications and assist with annual reporting requirements.

The GIPA case management and reporting tool is a free web-based resource that was developed by the OIC in partnership with the Road Traffic Authority (RTA) in early 2010. It was created to assist government agencies with their annual reporting of formal access applications under the GIPA Act.

In order to help agencies, the OIC provides phone and email assistance to users of the GIPA case management and reporting tool.

During the year, we held a series of demonstration sessions to help agency staff familiarise themselves with the GIPA case management and reporting tool. A total of 129 participants from 70 government agencies attended the demonstrations held in the Sydney CBD and Parramatta.

According to feedback collected from participants, 96 per cent of workshop attendees were highly satisfied with the demonstration sessions, with 85 per cent of attendees saying their work was directly related to formal access applications. During the demonstrations we received 26 suggestions on how we could improve the GIPA case management and reporting tool, with 17 of these being implemented in updated versions of the resource.

“More than 150 agencies are now registered to access the GIPA case management and reporting tool, which is designed to manage formal access applications and assist with reporting requirements.”

Our performance – Office of the Information Commissioner

Review

The Casework and Compliance team is primarily responsible for the OIC's review activities. These activities include reviewing agency decisions, investigating and conciliating complaints and monitoring agency performance.

At the beginning of 2011 we had a backlog of 160 open cases, however the second half of the year saw a steady improvement in the time taken to resolve cases, reflecting improved internal procedures, increased staffing and greater experience in dealing with the GIPA Act.

Reviews

Matters opened and closed from 1 July 2010 to 30 June 2011

Matter type	Received	Closed	Open
Complaints	60	59	1
Investigations	3	2	1
Reviews	301	156	145
ADT	36	6	30
Total	400	223	177
Total requests for assistance (not including ADT)	364	217	147

During the year, the team received 364 cases and closed 217. These were generally either a request for a review of an agency decision or a complaint about how an agency responded to the GIPA Act.

Some 301 matters received (83 per cent) were reviews of agency decisions, of which 156 (43 per cent) were finalised. The remaining open files have been allocated to staff for action. We received 60 complaints (16 per cent of matters received) about how agencies are responding to the GIPA Act. Of these, 59 have been finalised with one outstanding complaint.

Much work has been done on refining internal processes to improve the timeliness and flexibility of our complaint and review handling processes. These initiatives should lead to a steady improvement in our performance.

Compliance monitoring

This year we commenced our compliance monitoring program, which included:

- reviewing agency websites to monitor compliance with open access and proactive release of information. This will allow OIC to identify and document best practice
- reviewing agency annual reports to ensure compliance with the reporting requirements under the GIPA Regulation
- reviewing publication guides.

As part of this program the OIC wrote to heads of departments, universities, state-owned corporations and Ministers to remind all agencies under the GIPA Act of their compliance and reporting responsibilities under the Act.

The agency website reviews will commence in July 2011 and the 2011 – 2012 proactive compliance program is expected to take six months. The information gathered from this program will be included in the OIC's report to Parliament on the operation of the GIPA Act, including performance of agencies in accordance with section 37 of the GIIC Act.

Publication guides

All agencies were required to have a publication guide in place by 31 December 2010, and to notify the Information Commissioner prior to adopting the guide. As at 31 December 2010, we had received publication guides from 72 per cent of agencies (300 out of a possible 418).

The state election and subsequent reorganisation of principal departments impacted the publication guides of some agencies who had still not complied with the 31 December 2010 deadline. As at 30 June 2011, we had received guides from 82 per cent of agencies (345 out of a possible 421).

To ensure that agencies publication guides are up-to-date and to assist agencies that had not met their obligations to publish guides, the Information Commissioner nominated 31 July as the annual date for the review of publication guides, so that all agencies could work to ensure compliance with this section of the Act.

Feedback

Under section 17(h) of the GIPA Act, the Information Commissioner can report and make recommendations to the Minister responsible for the Act about proposals for legislative and administrative changes to further the objectives of the Act. The OIC provided feedback to the Attorney-General's Department in March 2011 recommending some amendments to the GIPA Act aimed at improving the Act's operation.

The OIC has developed various mechanisms, such as online surveys, seminar questionnaires, online feedback forms, community forums, information sessions and user group networks, to capture and evaluate feedback to help drive improvements in the way we work and assist agencies and the public.

In response to feedback, we plan to consult with stakeholders to explore how agencies impose charges for access to government information. A consultation paper will be published on the various options for charging in October 2011.

We participate in and support the information and privacy practitioners network, which brings together right to information and privacy officers from agencies across the state each quarter. The network has continued to develop the processes by which feedback can be given to the OIC by officers who deal with these matters on a daily basis.

We were also able to build on established links with the Local Government Managers Australia (NSW) network, which has been invaluable in highlighting issues of unique concern to local government agencies.

The OIC has a number of channels for receiving feedback from agencies and the public. We operate a free information line 1800 INFOCOM (1800 463 626) and have a general email address. The OIC's office is also open to the public from Monday to Friday from 9am to 5pm. We continue to use feedback received over the phone and in person, via email, feedback forms from training sessions and presentations to inform the development of resources to assist agencies and the public.

We received 84 requests to attend speaking engagements or to provide training assistance during the year, and responded to 84 per cent of these requests within five working days.

We collected formal feedback at 57 of our training sessions and presentations delivered by OIC staff to a total of 1550 participants. Eighty seven per cent of those who provided feedback said they were highly satisfied with the training sessions and presentations.

The OIC has developed various mechanisms, such as online surveys, seminar questionnaires, online feedback forms, community forums, information sessions and user group networks, to capture and evaluate feedback to help drive improvements in the way we work and assist agencies and the public.



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Our performance – Office of the Privacy Commissioner

Letter to the President and Speaker

The Hon Don Harwin MLC
President Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

The Hon Shelley Hancock MP
Speaker Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

31 October 2011

Dear Mr President and Madam Speaker

In accordance with section 61A of the *Privacy and Personal Information Protection Act 1998*, I present the following report on the work of the Privacy Commissioner for the 12 months ended 30 June 2011.

In addition, under section 61B of the *Privacy and Personal Information Protection Act 1998* (the Act), I have reported on the operation of the Act across all public sector agencies for the 12 months ended 30 June 2011.

A copy of both reports has been provided to the Attorney General as Minister responsible for this legislation as specified under section 61A (2) and 61B (2) of the Act.

Yours faithfully



John McAteer
Acting Privacy Commissioner
Information and Privacy Commission

Our performance – Office of the Privacy Commissioner

Privacy Commissioner's Report

The *Privacy and Government Information Legislation Amendment Bill 2010* was passed on 21 September 2010. The Bill was proclaimed to have effect from 1 January 2011 and at that time the previous entity of Privacy NSW and the Office of the Information Commissioner were amalgamated into a single legal entity, the Information and Privacy Commission (IPC).

This report covers the work of the Privacy Commissioner for the period 1 July 2010 to 30 June 2011. Due to the administrative changes on 1 January 2011, some aspects of our administration and compliance obligations will be reported in this report, and matters peripheral to the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) and the *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act) post 31 December 2010 are reported in the earlier sections of the IPC report.

In the reporting year, the Office of the Privacy Commissioner NSW continued to handle complaints, oversee internal reviews and intervene in Administrative Decisions Tribunal (ADT) proceedings, and provide assistance to the ADT as appropriate. We continued our strong working relationships with agencies, individuals and other clients in the community through the provision of assistance and guidance.

Most privacy complaints concerning NSW government agencies are responded to by the agency conducting an internal review or investigation of the matter, with a focus on the relevant information privacy principles (IPPs) (see appendix two for details) or health privacy principles (HPPs) (see appendix three for details) and whether there has been a breach. The Privacy Commissioner performs an oversight role of these internal reviews.

Privacy contact officers are responsible for developing the relevant NSW government agency's response to privacy complaints, with the support of more senior staff and chief executive officers of agencies. Many agencies have responded positively to submissions and comments from my office on how they might improve both their methodology and outcomes of their internal reviews. I appreciate the dedication and diligence of the privacy contact officers and their agencies in assisting my office in its work.



Enquiries and complaints received from members of the public continue to focus on privacy issues relating to surveillance at home and work, access to medical records and the use of criminal records. Some of these issues are not strictly within the scope of NSW privacy laws, which predominantly deal with privacy in information, or data, that is largely held by government agencies.

The state's privacy laws have limited application to the broader notion of privacy, which is commonly understood as 'the right to be left alone' or a right to be free of intrusions upon a person's seclusion, solitude or private affairs, public embarrassment or misrepresentation. While the issue of identity theft is not captured by any specific laws (other than the existing criminal laws) at present, across the nation moves are underway to reform the laws in these areas to catch up with the growing problem of 'cyber crime' and remote identity theft. While such broader privacy 'rights' or expectations are currently protected by some laws, such as nuisance, harassment or workplace surveillance, there are still gaps in the protection afforded by the law.

The issue of intrusive private surveillance (cameras trained from one property into another) has escalated in recent years and was under consideration for law reform and legislative developments during the previous Parliament. However, at present remedies for such matters arise under tort law, in the area of nuisance. Notwithstanding the competing demands on areas of privacy law reform, and legislative programs generally, it is hoped that a more effective method of addressing the intrusive actions of private video or CCTV surveillance directed at private property, will be available in the near future.

The issue of privacy tort reform was raised in the two previous annual reports where reference was made to the 2009 NSW Law Reform Commission report recommending a statutory cause of action for 'invasion of privacy', which was supported by the Privacy Commissioner.

At the very end of the reporting period an overseas 'scandal' involving allegations of serious breaches of privacy by a media organisation re-ignited discussion on the unresolved issue concerning the need for a statutory cause of action before the courts for serious breaches of an individual's privacy.

Privacy Commissioner

Since November 2009, the position of Privacy Commissioner has been filled on an acting basis. I have been acting Commissioner appointed by both the previous and current Attorney's General under Clause 1 of Schedule 1 and more recently under section 35F of the PPIP Act. However, on 22 August 2011 the NSW Attorney General Greg Smith SC announced the appointment of Dr Elizabeth Coombs, a retired senior public servant, as the new NSW Privacy Commissioner. Dr Coombs will take up her position on 7 November 2011 on a part-time basis.

Finally, I wish to acknowledge my Federal, interstate and Pacific rim privacy colleagues who have been very supportive in assisting me and my staff in our work, and for delivering an excellent Privacy Awareness Week.

I want to thank my IPC colleagues, in particular the privacy staff for their support, assistance, dedication and commitment to their work during my term as acting Privacy Commissioner. I also wish to thank Ms O'Donnell, the Information Commissioner and CEO of the IPC, for her support.



John McAteer
Acting Privacy Commissioner
Information and Privacy Commission

“Many agencies have responded positively to submissions and comments from my office on how they might improve both their methodology and outcomes of their internal reviews. I appreciate the dedication and diligence of the privacy contact officers and their agencies in assisting my office in its work.”

Our performance – Office of the Privacy Commissioner

Management and structure

Prior to 1 January 2011, the Privacy Commissioner was appointed by the Governor on the recommendation of the Attorney General and was responsible administratively for budget and expenditure to the Director General of Department of Attorney General and Justice (DAGJ). The staff of the Privacy Commissioner were employed under the *Public Sector Employment and Management Act 2002* (NSW).

From 1 January 2011, the Privacy Commissioner's staff were transferred from the Public Service to the Government Service and were amalgamated with the Information and Privacy Commission. The Privacy Commissioner is now appointed by the Governor following the decision of the Joint Parliamentary not to veto the proposed appointment. The Office of the Privacy Commissioner receives various administrative support services from the Department of Attorney General and Justice (DAGJ) under a service level agreement with the IPC.

The current staffing structure for the whole IPC (reflecting privacy structure post-Dec 2010) is reproduced in the IPC section of this report.

Note: The position of Principal Privacy Officer remained unfilled during the reporting period due to the Principal Privacy Officer acting as the Privacy Commissioner.

The staff of the Office of the Privacy Commissioner research significant developments in policy, law and technology, which may have an impact on privacy and make submissions, reports and recommendations to agencies and authorities.

Review of operations

The statutory functions of the Privacy Commissioner include advising individuals, public sector agencies, businesses and other organisations about the steps they should take to ensure that basic privacy rights are protected. The Office of the Privacy Commissioner does this by educating and promoting the meaning and value of privacy to the people of New South Wales.

The staff of the Office of the Privacy Commissioner research significant developments in policy, law and technology, which may have an impact on privacy and make submissions, reports and recommendations to agencies and authorities. Staff answer enquiries and advise people of possible ways of addressing breaches of privacy. They also investigate complaints and where possible conciliate privacy complaints.

The team provides verbal and written guidance on privacy matters to departmental heads and Ministers on complex compliance issues arising under privacy laws.

Staff members attended numerous public forums, training and educational sessions throughout the year to keep abreast of changes, that may impact on privacy legislation. They have also overseen the conduct of internal reviews of privacy complaints against public sector agencies and appear in the ADT during appeals dealing with internal reviews.

The Office of the Privacy Commissioner provides a variety of core services, which appear in the chart below.

Core business activities 1 July 2010 to 30 June 2011

Type	2010–11	2009–10
Enquiries responded to	1696	1227
Administrative Decisions Tribunal	44	31
Written advice provided	167	155
Internal review matters lodged	167	175
Complaints lodged	94	65

Privacy consumer response

Enquiries

The Office of the Privacy Commissioner NSW provides advice to members of the public and other organisations. During the year, the office responded to 1696 telephone, email and face-to-face enquiries – an increase from the 1227 enquiries responded to in 2009 – 2010.

In dealing with enquiries the Office of the Privacy Commissioner does not provide legal advice, as this may conflict with our complaint-handling functions. However, the office gives general guidance on privacy-related matters and procedural advice. In many cases, enquiries are resolved by staff suggesting practical ways of approaching a dispute. The Office of the Privacy Commissioner endeavours to respond to enquiries within one working day and in the majority of instances matters are now finalised at the time of the call when received during business hours.

Enquiries, which the Office of the Privacy Commissioner received in 2010 – 2011, were predominantly governed by surveillance legislation, such as the *Workplace Surveillance Act 2005* (NSW) and the *Surveillance Devices Act 2007* (NSW). While these Acts are privacy-related, the Office of the Privacy Commissioner does not administer them and cannot accept complaints about breaches of these Acts. We do, however, provide general information about surveillance to enquirers and refer them to the appropriate agency.

Enquiries by type 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
Telephone	1464	1032
Email	212	190
Face-to-face	20	5



Privacy Research and Policy Officer Alex Barksy with Privacy Legal and Policy Officer Siobhan Jenner.

Internal reviews

An internal review is an internal investigation, which a New South Wales public sector agency is required to conduct when an individual makes a privacy complaint under Part 5 of the PPIP Act or Part 3 of the HRIP Act.

If an individual complains about a breach of a privacy principle, the Office of the Privacy Commissioner will, in most cases, recommend that the individual lodge an internal review application with the relevant public sector agency, rather than seek investigation by the Privacy Commissioner. This approach provides the complainant with the option of taking their complaint to the ADT if they are unhappy with the outcome of the internal review. In exceptional circumstances, complainants may ask to have their complaints against NSW public sector agencies investigated by the Privacy Commissioner rather than by the agencies themselves.

Our performance – Office of the Privacy Commissioner

Internal reviews (continued)

Internal reviews and nature of information 2010 – 2011 and 2009 – 2010		
Type	2010–11	2009–10
Medical health records	48	48
Personal contact details	44	51
Other	26	–
Employment records	16	16
Criminal history/driving records	10	13
Student records	6	5
Identity/age records/ identity theft	5	5
All records/practices	5	–
Credit/banking/financial/ tax records	4	3
Investigation/law enforcement	4	8
Unknown	5	8
Surveillance/monitoring/physical privacy	3	–
Land title/local council records	2	18
Surveys/research/census	1	–
Tenancy information	1	–
Family/community history records	1	–
Court/tribunal	–	10
Data security/storage/archiving	–	2
Search/seizure	–	3
Customer/member records	–	2

Internal reviews by privacy principles 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
Disclosure	110	90
Use	32	11
Access	27	36
Retention storage	20	9
Collection	19	18
Accuracy	17	1
All IPPs/HPPs/DDPs	3	3
Other	5	6

Note: Some internal reviews contained more than one privacy principle.

The Privacy Commissioner has a monitoring role in relation to internal reviews. The Office of the Privacy Commissioner must be notified by all agencies of all internal review applications and the Privacy Commissioner may make submissions to agencies on any aspect of the internal review.

The total number of internal reviews dealt with by the Office of the Privacy Commissioner decreased by five per cent from the 2009 – 2010 figures. This may be due to the fact that many public sector agencies are becoming more experienced in using and understanding the PPIP Act. Alternatively the reason may be that agencies are increasing their reliance on section 53 (3) (d) of the PPIP Act whereby an agency is not obligated to conduct a review if the individual raises the 'breach' more than six months after becoming aware of the matter.

Advice

The Office of the Privacy Commissioner NSW continued to provide advice to individuals, government and agencies regarding privacy issues during the reporting period. Government recipients included the NSW public sector, local government, NSW Parliament and Ministers, and Commonwealth government agencies. The private sector continued to receive advice and assistance from the office. As in previous years, we were consulted about, and requested to comment on, proposed Bills, reviews of Acts, submissions regarding professional standards, discussion papers, guidelines and protocols. The Office of the Privacy Commissioner made a number of submissions to Commonwealth bodies and took an active role in the continuing national privacy law reform process. These submissions are available on the Privacy website: www.ipc.nsw.gov.au.

Written advice by privacy principles 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
Disclosure	69	41
Access	31	23
Collection	31	22
Other	22	16
All IPPs/HPPs/DDPs	18	17
Use	16	10
Physical privacy	9	6
Retention storage	8	6
Accuracy	7	6
Unknown/none	4	7

Note: Some written advice contained more than one privacy principle.

Written advice requested by source 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
Private individual	94	91
State government	45	41
Other governments	9	10
Other	5	6
Local government	4	2
Advocate/lawyer	4	–
Parliamentary enquiry	3	5

Privacy Awareness Week highlights risks

With Australians among the highest users of social networking sites in the world, privacy issues are becoming a serious concern, according to NSW acting Privacy Commissioner John McAteer.

Speaking at the Sydney launch of Privacy Awareness Week in May 2011, Mr McAteer said millions of people on social networking sites were putting their privacy at risk by failing to consider their profile security settings.

“While social networking is clearly a popular way for people to communicate, it has its risks in terms of privacy,” Mr McAteer said.

“Users of these sites need to check their profile settings to ensure that only the people they wish to communicate with have access to their personal communications.”

Privacy Awareness Week is an initiative of the Asia Pacific Privacy Authorities (APPA), which have prepared a series of privacy tips for safe social networking.

As part of the event, Mr McAteer also announced APPA’s international survey seeking information on social networking and privacy, and the launch of a web video illustrating what can go wrong.



Our performance – Office of the Privacy Commissioner

Appeals to the Administrative Decisions Tribunal (External Appeals)

If an individual is not satisfied with the outcome of their internal review, or if their application is not dealt with by the relevant public sector agency within 60 days from the agency's receipt of their application, they can apply to the ADT for a review of the conduct which gave rise to the internal review application.

In the ADT proceedings, the Privacy Commissioner has the role of "amicus curiae" (friend to the tribunal). This means that representatives of the Office of the Privacy Commissioner NSW can attend the ADT to assist it with interpretation of privacy law but officers cannot assist the parties to the litigation.

The office continued the practice of appearing in each new PPIP Act and HRIP Act appeal matter in the initial stages in order to assess whether the matter would address privacy issues of a broad public interest or importance. In some matters the various Judicial Members requested the Privacy Commissioner's additional or continued attendance and involvement, and often sought submissions in a matter in order to assist the tribunal in its task.

During the reporting period, the Privacy Commissioner and his staff attended listings of matters before the tribunal and made oral and written submissions on 117 occasions in some 44 matters. The details of the Privacy cases are available on the ADT website under the General Division and Appeal Panel indexes.

In addition to the published decisions on the ADT website, the Privacy website provides case summaries or case notes of the ADT decisions made under both the PPIP Act and the HRIP Act. These are currently being developed and expanded upon to provide assistance to clients on the operation of privacy law.

Administrative Decisions Tribunal and nature of information 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
Medical health records	18	9
Other	7	7
Employment records	5	5
Personal contact details	4	4
Investigation/law enforcement practices	3	–
Student records	3	1
Unknown	2	1
Surveillance/monitoring/physical privacy	1	2
Court/tribunal	1	2
Surveys/research/census	1	–

Note: Some Administrative Decisions Tribunal matters contained more than one privacy principle.

Complaints

Under New South Wales privacy legislation, the Privacy Commissioner is responsible for assessing, investigating and, in some cases, conciliating complaints. Complaints under the PPIP Act deal primarily with alleged breaches of the IPPs by New South Wales government agencies. Complaints under the HRIP Act, deal primarily with alleged breaches of the HPPs by New South Wales government agencies or the private sector. Most 'private sector' complaints relate to 'access' requests of medical practitioners.

The Privacy Commissioner may decline to investigate a complaint, if, in his or her view, it is frivolous, vexatious, trivial, lacking in substance, not made in good faith, etc. In addition, the Commissioner can decline a complaint if it can be resolved by referral to a more appropriate agency or if it would be more appropriately dealt with under the internal review provisions.

Who was the complaint made against 2010 – 2011 and 2009 – 2010

Type	2010–11	2009–10
State government	34	41
Private organisation	33	15
Private individual	18	8
Local government	9	1

Generally the PPIP Act does not provide the option of a matter being reviewed by the ADT, after it has been investigated by the Privacy Commissioner. If, however, the Privacy Commissioner has made a report under section 47 of the HRIP Act in relation to a private agency or individual, the complainant may apply to the ADT for an inquiry into the original complaint.

In the reporting period, the Privacy Commissioner dealt with 94 complaints, which is a significant increase on the 65 complaints dealt with the previous year.

Physical privacy

The Office of the Privacy Commissioner has a residual discretion and limited jurisdiction to investigate physical privacy matters and other privacy matters that do not only relate to personal or health information or data protection under section 36 (2) of the PPIP Act, which states that the Privacy Commissioner is able to 'receive investigate and conciliate complaints about privacy related matters' and 'to conduct such enquiries and make such investigations into privacy-related matters as the Privacy Commissioner thinks appropriate'. The discretion to investigate privacy matters, which go beyond the IPPs or HPPs and data protection, is exercised sparingly and in accordance with Part 4 of the PPIP Act. It is rarely exercised, if there would be another more appropriate remedy for the complaint in question.

Codes of Practice (under the PPIP Act and HRIP Act)

Agencies may request a Privacy Code of Practice to regulate the collection, use and disclosure of personal or health information held by public sector agencies and the procedures for dealing with that information. Codes may also modify the application to any public sector agency of any one or more of the IPPs or the HPPs.

There are presently 12 privacy codes in operation under New South Wales privacy legislation and they are published on the Office of the Privacy Commissioner NSW website: www.privacy.nsw.gov.au

No new codes were gazetted during the reporting period.

Public interest directions (or Exemptions)

Under state privacy laws the Privacy Commissioner can make public interest directions in relation to both the IPPs and the HPPs. Before making such a direction, the Privacy Commissioner is required to be satisfied that the public interest in requiring the agency or person in question to

comply with the relevant privacy principle(s) is outweighed by the public interest in the Privacy Commissioner making the direction.

There were 12 PPIP Act public interest directions in force as at 30 June 2011. In addition three HRIP Act public interest directions were in force at the end of the reporting period bringing the total number of current directions as at 30 June 2011 to 15. These directions are listed on the website.

In December 2010 the Privacy Commissioner renewed eight of the then 14 pre-existing public interest directions. The following directions were all renewed under the PPIP Act:

- Direction relating to requests made by the Ombudsman under section 13AA of the *Ombudsman Act 1974*. This direction allows public sector agencies to cooperate with the Ombudsman when the Ombudsman is conducting preliminary enquiries under section 13AA of the *Ombudsman Act 1974*. It was extended to 31 December 2010.
- Direction relating to the Collection of Personal Information about third parties by NSW Public Sector (Human Service) agencies from their clients. This direction replaced the Direction on the Better Service Delivery Program. It commenced on 1 July 2003 and affects some health, education, welfare, housing, juvenile justice and Aboriginal affairs agencies. It has been extended to 31 December 2011.
- Direction relating to the Disclosures of Information by the NSW Public Sector Agencies to the National Coronial Information System (NCIS) This direction affects some health and justice agencies. It was originally made on 18 February 2002 and has been extended to 31 December 2011.
- Direction relating to the Disclosures of Information by NSW Public Sector Agencies for Research Purposes. This direction affects most NSW state agencies. It was originally made on 28 September 2000 and has been extended to 31 December 2011.
- Direction relating to the Disclosure of Information to Victims of Crime. This direction affects many law enforcement and justice agencies. It was originally made on 28 September 2000. It has been extended to 31 December 2011.
- Direction relating to the Department of Human Services and Associated Agencies. Originally made on 30 June 2000, this direction has been extended to 31 December 2011. The original direction was substantially modified in later versions.

Our performance – Office of the Privacy Commissioner

- Direction relating to the Processing of Personal Information by NSW Public Sector Agencies in relation to their Investigative Functions. This direction covers most NSW state agencies. It was originally made on 30 June 2000. The direction was amended as part of the 're-making' process whereby a new clause 4AA was inserted relating to agencies which assist an agency in carrying out and conducting a lawful investigation. It was extended to 31 December 2010.
- Direction relating to the Information Transfers between NSW Public Sector Agencies. This direction covers most NSW state agencies. It was originally made on 30 June 2000. It has been extended to 31 December 2011.

One additional PPIP Act public interest direction was made during the reporting period.

- Direction relating to the disclosure of information to credit reporting agencies. This direction has been made to allow the department to provide personal information to credit reporting agencies to enable lenders to be better informed about the credit worthiness of individuals who have been subject to default judgments. The Privacy Commissioner will only make such directions under section 41 of the *Privacy and Personal Information Protection Act 1998* where he or she is satisfied that it is in the public interest to do so.

While eight directions were renewed (with modifications) and remain current, one new direction was initiated and remains current, a further three existing directions remained in force for the entire reporting period, being directions which continue until the end of the specific trial or program. A total of 12 PPIP Act directions were in force as at 30 June 2011.

Under the HRIP Act three directions were in force at 30 June 2011. The following HRIP Act directions were current at the time of reporting:

- Direction relating to CARAM-DFV Framework. This direction allows public sector agencies and non-government organisations operating within Cross Agency Risk Assessment and Management – Domestic and Family Violence Framework, to assess victims of domestic and family violence as to the extent to which those victims are at risk of experiencing future violence. (A related direction has been made under s41 of the PPIP Act).

- Direction relating to the Anti-Social Behaviour Pilot Project. This direction applies to the agencies listed in Schedule 1 and the Local Area Commands listed in Schedule 2. It operates from 2 September 2008 and replaces previous directions relating to the project which can be found below under previous directions. A related direction has been made under s41 of the PPIP Act.
- Direction relating to the Redfern Waterloo Partnership Project. This direction applies to agencies participating in the Redfern Waterloo Partnership Project. It was made on 26 May 2005 and has effect for 12 months from this date or until the completion of the project, whichever occurs later. A related direction has been made under s41 of the PPIP Act.

Issues relating to privacy exemptions are discussed under the review of the operation of the Acts section.

Privacy management plans

Under the PPIP Act, public sector agencies are required to prepare and implement a privacy management plan and provide a copy to the Privacy Commissioner. A privacy management plan sets out the agency's policies and procedures for complying with relevant IPPs and HPPs in their management and dealing with information. It assists staff within the agency in their day-to-day handling of personal and health information, and clients who wish to understand the privacy protections and how they are managed. The office cannot prepare these management plans – particularly if legal advice is needed regarding the agency's functions and legislation. Nevertheless, the office can provide general assistance with the drafting of privacy management plans and has material to assist agencies on its website including a "Guide to Making Privacy Management Plans".

The office is planning to audit all privacy management plans beginning in June 2011 with a view to ensuring that all state agencies complied with their statutory obligation to provide a copy of their plan to the Privacy Commissioner and that all privacy management plans were up-to-date. The Privacy Commissioner is particularly concerned that all agencies have updated privacy management plans, particularly in regard to any health information they handle.

During the reporting period privacy staff assisted with the preparation and publication of a new IPC privacy management plan.

Cyber safety campaign

One of the Office of the Privacy Commissioner's key initiatives during the year was to ensure the public of NSW remained informed about the protection of their privacy online with particular focus on children's cyber safety.

To support this initiative the Office of the Privacy Commissioner designed and published a half-page advertisement for the NSW Police Legacy Child Safety Handbook with 50,000 copies of the booklet distributed to families with primary school age children in NSW.

The cyber safety message continued to be promoted as part of the 2011 Privacy Awareness Week and at various community events through our Community Liaison Officer with more than 500 flyers distributed.

The Department of Education and Communities NSW, parents, and community teaching and learning exchange website TaLe www.tale.edu.au supported the work of the Office of the Privacy Commissioner by publishing the information on their website.

We will continue to work closely with our stakeholders in 2012 to ensure NSW parents have the tools to support them in keeping their children safe.



Key achievements 2010 – 2011

Some of the achievements of the Office of the Privacy Commissioner during the year were:

- integration with the former Office of the Information Commissioner into the new agency, the Information and Privacy Commission on 1 January 2011 (and on-going)
- provision of oral and written guidance on privacy matters to agencies, department heads and Ministers on often-complex compliance issues under privacy laws. This is a critical activity in overseeing the agencies' performance of their privacy obligations.
- new public interest direction made under section 41 of the PPIP Act, relating to the provision of court data to credit reporting agencies to enable lenders to be better informed about the credit worthiness of individuals who have been subject to default judgments
- revision and amendment of eight public interest directions under the PPIP and HRIP Acts, relating to the transfer and exchange of information, investigative functions, research, the National Coronial Information System, disclosure to Victims of Crime, assisting NSW Ombudsman requests
- submission to the Australian Government Joint Select Committee on Cyber Safety on cyber safety issues affecting children and young people
- submission to the Senate Finance and Public Administration Legislation Committee on the Amendments to the Australian privacy legislation
- submission to the NSW Legislative Council Privileges Committee and the Legislative Assembly Privileges and Ethics Committee on the Review of the Code of Conduct for Members of the NSW Parliament
- submission to the Senate Standing Committee on Legal and Constitutional Affairs Commonwealth Commissioner for Children and Young People Bill 2010 to establish a national Commissioner for Children and Young People
- submission to the NSW Attorney General on the Statutory Review of the *Workplace Surveillance Act 2005* (NSW)
- submission to the Senate Standing Committee on Legal and Constitutional Affairs enquiry into the exposure drafts on the Australian Privacy Amendment Legislation Credit Reporting

Our performance – Office of the Privacy Commissioner

- submission to the Federal Department of Health and Ageing on the Draft Concept of Operations relating to the introduction of a personally controlled health record system
- highly successful Privacy Awareness Week 1 – 7 May 2011 focusing on online privacy and the launch of an educative animation and survey (co-sponsored with Asia Pacific Privacy Authorities)
- participation in a highly successful National Law Week 15 – 21 May 2011
- appearing on 117 occasions and providing assistance to the ADT in finalising 44 privacy matters
- increased number of complaints developed into formal investigations during the reporting period. These have resulted in a number of NSW government agencies modifying their practices or procedures as a result of recommendations by the Commissioner
- the completion and publishing of the report of the investigation into the data breaches and hacking into personal information held by the University of Sydney (June 2011).

Continuing and emerging issues

The Office of the Privacy Commissioner continued to have input into the Australian and local privacy law reform process, especially with regard to the intersection of privacy and freedom of information laws and the focus on simplification and harmonisation of local privacy law.

The acting Privacy Commissioner provided input into the Commonwealth's revision of privacy and freedom of information legislation through its exposure draft legislation and the Commonwealth response to the Australian Law Reform Commission Privacy and FOI report, and has provided feedback on the simplification of the National Privacy Principles and E-Health identifiers.

The Office of the Privacy Commissioner continued to have input into the Australian and local privacy law reform process.

The Office of the Privacy Commissioner finds it is increasingly managing the 'privacy landscape' in a rapidly changing technological environment by the use of strategic resources and its powers.

The office is mindful that it has to balance the competing public interest demands for privacy and access to information within the demands of a modern, information-dependent society.

In more and more situations, the acting Privacy Commissioner finds he needs to balance the competing public interest requests for privacy law exemption by law enforcement and associated agencies seeking access to personal information held by other NSW government agencies with the need to protect the privacy of individuals.

Another important issue for the Commissioner is how to improve the standard of privacy knowledge and practice among the community and within NSW government agencies so that the private and public sectors and the citizens of NSW understand their privacy rights and obligations.

The business planning process for 2011 – 2012 will allow the Office of the Privacy Commissioner to formalise its revised mandate as the Information and Privacy Commission, where the focus of the office must extend to include:

- consistent information and advice
- coordinated training
- a common point of contact for the public
- administrative and operational efficiencies through shared corporate services
- increased resources to the Office of the Privacy Commissioner.

Privacy law reform

Many of the developments both federally and in New South Wales from January 2006 to June 2010 were reported in previous years reports. A detailed report on the proposal to join the Privacy Commissioner's staff and the information Commissioner's staff in a single organisation was provided in last year's annual report.

Since the last report, the new Commonwealth FOI/Privacy regime commenced on 1 November 2010, headed by the Australian Information Commissioner Professor John McMillan AO. The Office of the Australian Information Commissioner (OAIC) has two deputies, one the Privacy Commissioner Timothy Pilgrim, and the other the FOI Commissioner Dr James Popple.

In NSW, the new Information and Privacy Commission (IPC) brought together the NSW Information Commissioner and NSW Privacy Commissioner from 1 January 2011.

Privacy laws are fundamentally concerned with protecting individuals' privacy and confidentiality, while open government laws concern transparency and openness. The point at which the laws intersect is the disclosure of third persons' personal information under an access application. The GIPA Act requires the consideration of privacy (when assessing government information access requests) to be undertaken by a balancing that assesses the public interest in protecting or waiving privacy on a case-by-case basis in relevant matters.

The organising principle of the new open government regime is the 'public interest'. Government information is to be released unless there is an overriding public interest against disclosure. Two public interest considerations against disclosure, which may be taken into account in the new public interest test, are based on privacy protection: that release of government information may involve disclosure of a person's personal information or breach of a privacy principle.

It must be remembered that within the IPC, the Privacy Commissioner still retains jurisdiction to deal with certain complaints involving the private sector, private individuals and corporations in respect of health information, as well as the residual jurisdiction relating to privacy.

Report on operations of PPIP Act section 61B

There are a number of matters which continue to impact on the effective and efficient operation of privacy law under the *Privacy and Personal Information Protection Act 1998* (the PPIP Act). These matters have been extant since the commencement of the legislation but remain outstanding for a number of reasons.

The main areas relate to privacy exemptions under section 41 of the PPIP Act, and the unresolved issue of trans-border disclosures of personal information from New South Wales.

Exemptions

Over the last three years my predecessors and myself have raised concern about the substance of certain Public Interest Directions dating back to the early 2000s. Specifically that the directions relating to information transfers between public sector agencies and the disclosure of information for research purposes ought to be contained in legislation administered by the agencies,

which currently rely upon these Directions. In recent years the Government has suggested that this matter was best considered in the context of the Government's response to the Law Reform Commission's reports on privacy, particularly in relation to the possible adoption of national privacy principles and Public Interest Directions.

I note that in Report 127 dated May 2010 but tabled in May 2011 the Law Reform Commission quoted a position from the earlier statutory review of the PPIP Act:

The main problem with the use of section 41 directions is that what should be a short-term solution to an information management problem becomes the effective long-term solution. The directions are simply re-made continuously as they expire because of lack of satisfactory progress on negotiating a more long-term solution.

The Law Reform Commission holds the view that 'a statutory basis for long term exemptions is vastly preferable to the use of Public Interest Directions (PIDs), and that the use of PIDs should be limited to the original intent behind the provisions – as temporary measures.' (pg 166 report 127 NSWLRC).

Given the fact that the Commonwealth and NSW Governments are currently considering the drafting and adoption of national privacy principles (currently described as Australian Privacy Principles) and national uniformity for privacy laws generally, I suggest that the convention of making the directions for 12 months be waived or otherwise modified some time in the future. This will allow for further time for the NSW Government to consider the possible adoption of national privacy principles and it will also give the relevant agencies time to consider whether they need to rely on the directions at all or to seek amendments to their own legislation.

The power to make directions continues to be a shared power, exercised by the Privacy Commissioner on the Attorney's approval as specified in the statute.

The organising principle of the new open government regime is the 'public interest'. Government information is to be released unless there is an overriding public interest against disclosure.

Our performance – Office of the Privacy Commissioner

Commissioner warns patrons about handing over fingerprints

The Office of the Privacy Commissioner plays an important role in educating people about the meaning and value of privacy in their day-to-day lives and how they can protect their privacy.

Early this year patrons of the Coogee Bay Hotel complained about having to provide their fingerprints for scanning before being allowed into the venue.

Asked to comment by the media about this new practice of collecting biometric information, acting Privacy Commissioner John McAteer said the measures appeared to be legally permissible because the individual was “opting in” and consenting to the collection.

“Without their consent the forced or secret collection of such information by the business would be illegal,” he said.

However, Mr McAteer warned individuals to be wary about handing over personal information where it was unclear as to whether it was necessary, sanctioned or otherwise required by law. He said fingerprint collection was only specifically sanctioned for identification purposes in the criminal justice system, whereby police collected fingerprints from some alleged offenders in order to prove the identity of a person when they come before a court.

Mr McAteer warned that the collection of personal information, such as scanned copies of NSW driver’s licences, and biometric data, such as fingerprints, could be used by criminals to steal someone’s identity.

“If a patron were wary about this practice, ideally they should find an alternative entertainment venue which does not copy or retain any personal information,” he said.

“If the information needs to be copied or held by the organisation, people should check how the information will be used, and the security measures for keeping the data safe. It is also wise to check how long the data will be retained, and how a customer can verify the data holdings for compliance with such policies.”

Trans-border

The operation of the trans-border provisions in NSW privacy law remains unresolved after some 12 years of operation of the PPIP Act. The tension is between the operation of section 18 (the general disclosure limits) and section 19 (special restrictions on disclosure). Following the decision of the ADT in the case of *GQ v NSW DET (No 2) [2008] NSWADT 319* there is a view that in its present form, there is no privacy protection when a NSW government agency discloses information outside of the state or to a Commonwealth agency.

The key to the issue on the current drafting is on the interpretation of section 19(2) and its relationship with section 18 and in particular whether its effect is to exempt agencies from compliance with section 18 in respect of disclosure interstate or to commonwealth agencies until such time as section 19(2) becomes effective by virtue of section 19(5).

A contrary view to the case of *GQ* is that the case was incorrectly decided and section 19(2) should be interpreted providing extra obligations in addition to section 18 rather than in lieu of section 18.

An ordinary literal reading of section 19(2) does not indicate anything inconsistent with section 18.

Interpreting section 19(2) to exclude section 18 thereby creating the current “gap” in relation to interstate/ Commonwealth disclosure is contrary to the purposive approach of statutory interpretation as it promotes the very actions which the Act seeks to regulate. It would also appear (in so far as section 19(5)) to go against the purpose of the Act.

Various efforts have been undertaken over the last decade to tighten and settle the trans-border provisions, and the current lack of certainty should be addressed as a priority in a determinative manner perhaps by legislative amendment rather than going down the code-making path currently provided for in the section.

The rest of the matters relating to the operation of the PPIP Act are canvassed elsewhere in this report.

Stakeholder engagement

An education and promotion strategy has been prepared to provide a strategic framework for all education and promotion activities to support the charter of the Office of the Privacy Commissioner.

Since 1 July 2010, the Office of the Privacy Commissioner has provided advice and assistance through speaking engagements, presentations and training to:

- Chinese Taipei privacy law implementation delegation
- Health Information Managers Association
- Hope/Mayne Healthcare
- Mental Health Association of NSW
- NSW Attorney Generals Legal Services staff
- NSW Health Privacy Contact Officers
- NSW Maritime legal and policy staff
- Office of Personal Information Protection, Policy Planning Division, Consumer Affairs Agency, Japan
- Probus Pennant Hills
- Right to Information and Privacy contact officers (NSW public sector) quarterly forum at Parliament House
- Roads and Traffic Authority
- Schizophrenia Association
- School for Seniors, Current Affairs Group.

Conferences and seminars addressed included:

- Biometrics Institute 12th Conference, panel session "Data Protection and Public Education"
- Local Government Managers Association
- Privacy Authorities Australia (PAA) Forum in Adelaide in March 2011 and in Melbourne in September 2010
- Asia Pacific Privacy Authorities (APPA) Forum in Auckland, New Zealand in December 2010.

From the nine direct requests received in the reporting period for speaking engagements or some form of training assistance or information, 90 per cent were responded to within five working days.

Community activities

The Office of the Privacy Commissioner aims to develop, maintain and strengthen relationships with a diverse range of community groups. In April 2011 the Information and Privacy Commission recruited a Community Liaison Officer, who is available to attend community events and provide targeted and culturally appropriate education on privacy rights to community groups.

The Community Liaison Officer has attended 11 community events in the reporting period and is also actively engaged in meeting with non-government and interagency groups and networks to promote awareness of privacy and access rights, provide assistance and training to community workers and community groups as well as members of the public.

Interagency meetings of various multicultural and migrant workers have been attended, as have meetings of various Koori groups.

The Office of the Privacy Commissioner aims to develop, maintain and strengthen relationships with a diverse range of community groups.

Our performance – Office of the Privacy Commissioner

Interactive online training

From 1 July 2010 to 30 June 2011, the Office of the Privacy Commissioner received 32 requests for access to the PPIPA Act online training program from:

- 20 NSW government agencies
- seven local councils
- two state-owned corporations
- two universities
- one interstate government agency.

Data on the numbers of individual participants within each agency is not currently collected.

Agencies that completed the online training reported that:

- the program met its stated objectives (92.5 per cent agreed)
- they were highly satisfied with access to the package (85 per cent agreed)
- they were highly satisfied with the layout of the package (54 per cent agreed*)
- they were highly satisfied with the materials as an aid to learning (69.5 per cent agreed).

* *Majority reflects one particular agency that had unique issues with how the program displays through their browser.*

Website

In February 2011, the Office of the Privacy Commissioner launched its newly branded website: www.privacy.nsw.gov.au.

The website provides users with information regarding the Office of the Privacy Commission, legislative overview and a range of comprehensive printable resources. In 2010 – 2011 the Privacy website received more than 313,209 hits.

Privacy Awareness Week

Privacy Awareness Week is an annual event and an initiative of all the Asia Pacific Privacy Authorities (APPA), including the Australian states and territories. The Office of the Privacy Commissioner supports the nationally sponsored initiative by making a small financial contribution and by contributing staff resources towards promoting the privacy awareness week activities which highlighted the issues of cyber safety and security.

As part of the activities, the Office of the Privacy Commissioner co-launched an online education video and social media privacy survey to allow users to test themselves on their privacy awareness in respect of passwords for use of and access to their social media sites.

The acting Privacy Commissioner conducted a number of state-wide and regional media interviews in the press and on radio.

National Law Week

Law Week was a national event and in NSW a large expo of legal information and services was held in Martin Place, Sydney on 16 May 2011. The expo attracted a large number of people interested in both legal and government services.

The IPC's stall attracted many interested people who collected brochures, information booklets, posters, checklists and other material with a strong focus on privacy and identity theft. All Privacy staff took turns in staffing the stall, distributing information and answering enquiries about privacy awareness and protection.

Asia Pacific Privacy Authorities (APPA)

APPA is the principal forum for privacy authorities in the Asia-Pacific region. The forum aims to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints. APPA convenes twice a year and discusses permanent agenda items, which include jurisdictional reports from each delegation, while an initiative-sharing round table is also held.

Members of the forum include Australia (the Commonwealth), Canada, British Columbia, Hong Kong, Korea, New Zealand, New South Wales, Victoria and the Northern Territory.

During the reporting period, APPA held two forums. Its 34th Asia Pacific Privacy Authorities Forum was held in Auckland, New Zealand on 6 to 8 December 2010 and its 35th Asia Pacific Privacy Authorities Forum was held in South Korea on 2 – 3 June 2011. Unfortunately, due to staffing and budgetary limitations no representative from NSW attended the Korean forum, however the Privacy Commissioner provided a detailed jurisdiction report to the forum.

Privacy Advisory Committee (PAC)

The PAC comprised both Government and Opposition appointees, and with the passing and proclamation of the Privacy and Government Information Legislation Amendment Bill 2010 in September 2010 and January 2011, the PAC was abolished and replaced by a joint Information and Privacy Advisory Committee which at time of writing had not been constituted.

Privacy Commissioner releases report on Sydney Uni security breach

The Privacy Commissioner has extensive powers to resolve complaints and can launch their own investigations into systemic breaches of privacy.

In January 2011, the acting Privacy Commissioner John McAteer launched a major investigation into the University of Sydney after media coverage on the leaking of thousands of student records.

The investigation found that the personal information of University of Sydney students was made freely available to anyone who typed a random student ID number into a university website.

In his report Mr McAteer found the university had breached its obligations to protect students' personal data under the *Privacy and Personal Information Protection Act 1998* (PPIP Act).

"The leaking of students' personal data resulted from a programming error that enabled direct access to student records without the need for a password," Mr McAteer said.

The report found that the error could reasonably have been detected with proper testing and that the university had not taken appropriate steps to ensure the security of students' personal information.

However, Mr McAteer praised the quick response of the university to rectify the security breach once it was informed by disabling unprotected sections of the website, taking action to inform students of the problem and contracting a security company to test that the flaw had been fixed.

Case notes

The academic and the university

Our office received a complaint from a university academic who was concerned that student course feedback surveys breached his privacy and that of other teaching staff.

After examining the matter the university decided to conduct an internal review of the complaint. The main issue related to courses where there was only a single teacher, and that the published survey result information disclosed personal information about the teacher (without their consent). The university had some difficulties accepting that the practice appeared to breach the PPIP Act especially in circumstances where the teacher was not named. They maintained this position until our office provided detailed advice which resulted in a cessation of the practice in single-teacher subjects, and the settling of the ADT appeal.

The university then worked with the Privacy Commissioner to examine how they could meaningfully report on student evaluation (of single-teacher subjects) and comply with the PPIP Act where consent was not forthcoming.

The elderly widow and the charity

Our office received a complaint from an elderly woman, concerning an unsolicited 'invitation' to an 'event' that was apparently sponsored by a well-known medical charity. The invitation requested that the woman log on to the website which had been created in her name, and pledge donations as part of her 'event'.

We believed that the practice offended the Data Protection Principles, as published by this office, and appeared to be both an intrusive and somewhat objectionable practice which clearly offended and distressed the recipient.

Our office conciliated the matter whereby we conveyed the distress and other concerns of the complainant. Bearing in mind the purpose of the charity, we put a view that the situation involving the complainant appeared derogatory, insensitive, and clearly a sophisticated intrusion into her life which caused her enormous anxiety. Initially the charity had some difficulty with accepting our position, especially as they believed that the marketing campaign had been 'successful' in previous years. However their focus was, to some extent understandably, on the amount of funds raised by the program. The unwarranted intrusion and distress issues were somehow missed in their 'deliberations'. When some of the complainant's recent circumstances were explained, and the fact that the program had no regard to the age, health, education, or other circumstances of the recipients, the charity acknowledged that program was inappropriate, modified it and apologised to the complainant.

Our investigation highlighted how organisations and businesses buy 'mailing lists' from third parties with no knowledge of how the data is obtained, and the circumstances of the recipients. Often individuals donate to a charity or buy a product with little or no knowledge of what might happen with their details and as a result unintentionally end up on mailing and other 'unsolicited' lists.

We believed that the practice offended the Data Protection Principles, as published by this office, and appeared to be both an intrusive and somewhat objectionable practice which clearly offended and distressed the recipient.

Privacy breached under guise of corruption prevention

We received a complaint that a NSW government agency had breached the privacy of a NSW local government employee by disclosing his private business to his employer. The context was that the individual was in a minor dispute with the agency over a personal matter, but was required by his local government employer to write to the agency on official business concerning an unrelated matter.

Rather than telephone the general manager of the council to query the basis of the letter (and confirm whether it was authorised), the agency wrote a detailed letter outlining all of the individual's dealings with them, and challenged the basis of the council's formal overture suggesting that the officer was acting in a disingenuous and improper manner. As far as this office was concerned the context of the letter was clear and unambiguous on the face of it, and no clarification was needed, and further the council confirmed that the employee's actions were both sanctioned and necessary. Of particular concern was the apparent reliance on corruption prevention issues to sanction the right to breach privacy without taking any reasonable steps to independently verify the facts of the matter. Rather than properly pursue such concerns, the agency merely disclosed personal information on the pretext of possible corruption prevention.

While the head of the agency initially agreed in a meeting to apologise to the complainant, the agency ultimately refused to formally accept that their response was disproportionate, and the privacy of the individual had been compromised.

Is CCTV surveillance an invasion of privacy or a duty of local government?

Many complaints are received concerning the use of CCTV and its impact on privacy. In NSW law it is not clear whether CCTV constitutes 'personal information' as defined in the PPIP Act and thus could give rise to the payment of damages if a breach resulting in loss or damage was established.

During the reporting period, one such case raised the prospect of resolving this issue. A citizen had complained about the installation of CCTV cameras in the CBD of a regional council. The complainant wished to move freely around the town without his movements being subject to scrutiny and surveillance. Of paramount concern was that the cameras were only trained on public places rather than private property, and there was a concern raised by the complainant that, based on the manner in which the cameras had been funded and promoted, this was a law enforcement initiative and as such was beyond the role or powers of the council.

However, prior to adjudicating on the physical privacy concerns and the powers of the council, the issue of whether the images were 'personal information' had to be decided. The Privacy Commissioner outlined the course that the Administrative Decisions Tribunal needed to take to decide this issue. The tribunal accepted those submissions and adopted that course, but when it examined the actual evidence (the recorded images), all of the images had been deleted by council or the holding entity.

As all of the 'evidence' had been deleted there was nothing to rule on and the case was dismissed. The Privacy Commissioner noted: "What is the point of the cameras recording data – in breach or not of privacy – if the data is routinely deleted?"

Our financial performance

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Statement by the Information Commissioner

Pursuant to Section 45F of the *Public Finance and Audit Act 1983*, I state that:

1. The accompanying financial statements exhibits a true and fair view of the financial position of the Information and Privacy Commission as at 30 June 2011 and transactions for the six months then ended.
2. The financial statements have been prepared in accordance with the provisions of the *Public Finance and Audit Act, 1983*, the *Public Finance and Audit (General) Regulation 2010* and the Treasurer's Directions.

Further I am not aware of any circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



Deirdre O'Donnell
Information Commissioner
Information and Privacy Commission
17 October 2011

Independent Auditor's Report



GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDITOR'S REPORT Information and Privacy Commission

To Members of the New South Wales Parliament

I have audited the accompanying financial statements of the Information and Privacy Commission (the Commission), which comprise the statement of financial position as at 30 June 2011, the statement of comprehensive income, statement of changes in equity, statement of cash flows and a summary of compliance with financial directives for the 6 months then ended, notes comprising a summary of significant accounting policies and other explanatory information.

Opinion

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Commission as at 30 June 2011, and its financial performance for the 6 months then ended in accordance with Australian Accounting Standards
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2010

My opinion should be read in conjunction with the rest of this report.

Information Commissioner's Responsibility for the Financial Statements

The Information Commissioner is responsible for the preparation and fair presentation of the financial statements that give a true and fair view in accordance with Australian Accounting Standards and the PF&A Act, and for such internal control as the Information Commissioner determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with Australian Auditing Standards. Those standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Information Commissioner, as well as evaluating the overall presentation of the financial statements.

Our financial performance

Independent Auditor's Report (continued)

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does not provide assurance:

- about the future viability of the Commission
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal control
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.

Independence

In conducting my audit, I have complied with the independence requirements of the Australian Auditing Standards and other relevant ethical pronouncements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.



Jack Kheir
Director, Financial Audit Services

17 October 2011
SYDNEY

Statement of Comprehensive Income

For the six months ended 30 June 2011

	Notes	Actuals 2011 \$	Budget 2011 \$
Expenses			
Operating Expenses			
Employee related expenses	2(a)	1,479,497	1,694,342
Other operating expenses	2(b)	974,612	532,700
Depreciation and amortisation	2(c)	73,734	66,000
Total Expenses excluding losses		2,527,843	2,293,041
Revenue			
Investment Revenue	3	74,260	0
Other Revenue	3	50,000	0
Total Revenue		124,260	0
Gain/(loss) on disposal	4	0	
Net Cost of Services		2,403,583	2,293,041
Government Contributions			
Recurrent Appropriation	5	3,295,889	2,504,000
Capital Appropriation	5	270,000	250,000
Acceptance by the Crown Entity of employee benefits and other liabilities	6	19,479	0
Total Government Contributions		3,585,368	2,754,000
SURPLUS/(DEFICIT) FOR THE YEAR		1,181,785	460,959
Other Comprehensive Income		0	
TOTAL COMPREHENSIVE INCOME FOR THE YEAR		1,181,785	460,959

The accompanying notes form part of these financial statements.

Our financial performance

Statement of Financial Position

As at 30 June 2011

	Notes	Actual 2011 \$	Budget 2011 \$
ASSETS			
Current Assets			
Cash assets	7	417,959	460,958
Receivables	8	762,476	0
Total Current Assets		1,180,435	460,958
Non-Current Assets			
Receivables	8	0	0
Plant & Equipment	9	255,978	1,459,000
Intangible Assets	10	649,638	418,000
Total Non-Current Assets		905,616	1,877,000
Total Assets		2,086,050	2,337,958
LIABILITIES			
Current Liabilities			
Payables	11	388,862	0
Provisions	12	273,673	0
Other	13	428,674	0
Total Current Liabilities		1,091,210	0
Non-Current Liabilities			
Provisions	12		0
Total Non-Current Liabilities		0	0
Total Liabilities		1,091,210	0
Net Assets/(Liabilities)		994,843	2,337,958
EQUITY			
Accumulated funds		994,843	2,377,958
Total Equity		994,843	2,377,958

The accompanying notes form part of these financial statements.

Statement of Changes in Equity

For the six months ended 30 June 2011

	Notes	Accum Funds \$
Balance as at 30 June 2010		0
Surplus/(deficit) for the year		1,181,785
Equity Transfer – Privacy NSW	15	(63,774)
Equity Transfer – OIC	15	(123,168)
Other Comprehensive Income		0
Total Other Comprehensive Income		0
Transaction with owners in their capacity as owners		0
Balance as at 30 June 2011		994,843

The accompanying notes form part of these financial statements.

Our financial performance

Statement of Cash Flows

For the six months ended 30 June 2011

	Notes	Actual \$	Budget \$
CASH FLOW FROM OPERATING ACTIVITIES			
Payments			
Employee related expenses		(2,046,076)	(1,694,342)
Other expenses		(831,369)	(598,700)
Total Payments		(2,877,445)	(2,293,042)
Receipts			
Proceeds from Sale of Assets			
Investment Income		38,230	0
Total Receipts		38,230	0
Cash Flows from Government			
Recurrent appropriation		2,073,369	2,504,000
Capital appropriation		(283,806)	250,000
Net Cash Flows from Government		1,789,563	2,754,000
NET CASH FLOWS FROM OPERATING ACTIVITIES	14	(1,049,653)	460,958
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of investments		0	
Purchases of Plant, Equipment and Intangibles		(134,925)	0
Purchases of investments		0	
NET CASH FROM INVESTING ACTIVITIES		(134,925)	0
CASH FLOWS FROM FINANCING ACTIVITIES			
Repayment of Borrowings and Advances		0	
NET CASH FLOWS FROM FINANCING ACTIVITIES		0	0
NET INCREASE/(DECREASE) IN CASH		(1,184,578)	460,958
Opening Cash and Cash equivalents		1,602,537	0
CLOSING CASH AND CASH EQUIVALENTS		417,959	460,958

The accompanying notes form part of these financial statements.

Summary of Compliance with Financial Directives

For the six months ended 30 June 2011

Supplementary Financial Statements

	2011 Recurrent Appropriation \$	2011 Expenditure/ Net Claim on Consol. Fund \$	2011 Capital Appropriation \$	2011 Expenditure/ Net Claim on Consol. Fund \$
ORIGINAL BUDGET				
APPROPRIATION/EXPENDITURE				
Appropriation Act – OIC (Jul-Dec 2010)	1,951,000	1,951,000	0	0
Appropriation Act – IPC (Jan-Jun 2011)	1,949,000	1,533,889	500,000	270,000
Additional Appropriations	0			
S21A PF & AA – special appropriation	0	0	0	0
S24 PF & AA – transfers of functions between departments				
S26 PF & AA Commonwealth Specific Purpose Payments	0	0	0	0
S45 Appropriations Act – IPC (Jan-Jun 2011)	1,250,000	1,250,000	0	0
S45 Appropriations Act – IPC (Jan-Jun 2011)	512,000	512,000	0	0
Total	5,662,000	5,246,889	500,000	270,000
OTHER APPROPRIATIONS/EXPENDITURE				
Treasurer's Advance	0	0	0	0
Section 22 – expenditure for certain works and services	0	0	0	0
Transfers to/from another Agency (section 28 of the Appropriation Act)	0	0	0	0
Total	5,662,000	0	500,000	0
Total Appropriation/Expenditure/Net Claim on Consolidated Fund (incl. transfer payments)		5,246,889		270,000
Amount drawn down against Appropriation	5,662,000		283,563	
Liability to Consolidated Fund		(415,111)		(13,563)

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

The recurrent funding of the Information and Privacy Commissioner is included to fully account for all monies paid by NSW Treasury during the year ended 30 June 2011. The Office of Commissioner was abolished as at 31 December 2010 and subsumed within the Information and Privacy Commission.

The Liability to Consolidated Fund represents the difference between the "Amount drawn down against Appropriation" and the "Total Expenditure/Net Claim on Consolidated Fund".

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

1. Summary of significant accounting policies

(a) Reporting Entity

The Information Commissioner is appointed under section 4 of the *Government Information (Information Commissioner) Act 2009* (GIIC Act). Section 12 of the GIIC Act provides that staff of the Commissioner are employed under chapter 1A of the *Public Sector Employment and Management Act 2002*.

The role of the Information Commissioner is set out in section 17 of the *Government Information (Public Access) Act 2009* (GIPA Act). In essence, the Commissioner is responsible for:

- (1) promoting public awareness and understanding of the GIPA Act and to promote the object of this Act
- (2) assisting agencies with their functions under the GIPA Act.

The Information and Privacy Commission is a NSW government department. The Commission is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts. It is required to comply with the Financial Reporting Code.

On 1 January 2011, Privacy NSW was transferred under Machinery of Government Changes to the Information and Privacy Commission from the Attorney General's Division, Department of Attorney General and Justice, with the financial results of the Privacy Commission for the six months ended 30 June 2011 included in the financial results of the Information and Privacy Commission. The financial results of Privacy NSW for the six months ended 31 December 2010 are reported within the financial results of the Attorney General's Division. Consequently the Office of the Information Commissioner changed its name to the Information and Privacy Commission on 1 January 2011, in acknowledgement of its enhanced functions and responsibilities.

These financial statements for the six months ended to 30 June 2011 have been authorised for issue by the Information Commissioner on 17 October 2011.

(b) Basis of Preparation

The Commission's financial statements are a general purpose financial report which has been prepared in accordance with applicable Australian Accounting Standards (which include Australian Accounting Interpretations), other authoritative pronouncements of the Australian Accounting Standards Board (AASB), the requirements of the *Public Finance and Audit Act 1983* and Regulation, and the Treasurer's Directions.

Property, plant and equipment and NSW Treasury Corporation (TCorp) Hour Glass Investments Facilities are measured at fair value.

Judgements, key assumptions and estimations that management has made, are disclosed in the relevant notes to the financial report.

All amounts are rounded to the nearest dollar and are expressed in Australian currency.

No comparatives are shown as the Information and Privacy Commission includes the financial results of Privacy NSW for the six months ended 30 June 2011.

The funding for the Commission was made via a Treasurer's Advance under the *Appropriation (Budget Variations) Act 2010*.

The financial statements have been prepared on a going concern basis.

(c) Statement of Compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Property, Plant and Equipment

(i) Acquisition of Assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Commission. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to the asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

1. Summary of significant accounting policies (continued)

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent, the deferred payment amount is effectively discounted at an asset-specific rate.

(ii) Capitalisation Threshold

Property, plant and equipment and intangible assets costing \$10,000 and above individually (or forming part of an IT network costing more than \$10,000) are capitalised.

(iii) Revaluation of Property, Plant and Equipment

Physical non-current assets are valued in accordance with the "Valuation of Physical Non-Current Assets at Fair Value" Policy and Guidelines Paper (TPP 07-1). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment*.

Plant and equipment are measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative uses, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market buying price, the best indicator of which is depreciated replacement cost.

The Commission will revalue each class of plant and equipment at least every five years or with sufficient regularity to ensure that the carrying amount of each asset in the class does not differ materially from its fair value at reporting date.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balance of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against one another within a class of non-current assets, but not otherwise.

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset revaluation reserve in respect of that asset is transferred to accumulated funds.

(iv) Impairment of Plant and Equipment

As a not-for-profit entity with no cash generating units, the Commission is effectively exempted from AASB 136 *Impairment of Assets* and impairment testing. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

(e) Depreciation/Amortisation of Property, Plant and Equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life.

All material separately identifiable components of assets are depreciated over their shorter useful lives. Land is not a depreciable asset.

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

1. Summary of significant accounting policies (continued)

(e) Depreciation/Amortisation of Property, Plant and Equipment (continued)

The depreciation/amortisation rates used for each class of assets are as follows:

	%
Computer Equipment	25
Office Equipment	20
Furniture & Fittings	10
Intangible Assets – Software	25
Intangible Assets – Software – Major Projects	10

(f) Maintenance

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

(g) Intangible Assets

The Commission recognises intangible assets only if it is probable that future economic benefits will flow to the Commission and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

All research costs are expensed. Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for the Commission's intangible assets, the assets are carried at cost less any accumulated amortisation.

The Commission's intangible assets are amortised using the straight-line method.

In general, intangible assets are tested for impairment where an indicator of impairment exists. However, as a not-for-profit entity with no cash generating units, the Commission is effectively exempt from impairment testing.

(h) Payables

These amounts represent liabilities for goods and services provided to the Commission and other amounts, including interest. Payables are recognised initially at fair value, usually based on the transaction cost or face value.

Subsequent measurement is at amortised cost using the effective interest method. Short term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(i) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where:

- The amount of GST incurred by the agency as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the cost of acquisition of an asset or part of an item of expenses; and
- Receivables and payables are stated with the amount of GST included.

(j) Employee-Related Expenses

- (i) Salaries and wages (including non-monetary benefits), annual leave and paid sick leave that fall due wholly within 12 months of the reporting date – recognised as short-term employee benefits and measured at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.
- (ii) Long-term annual leave that is not expected to be taken within 12 months – the nominal method has been used as this is not materially different from the present value method as required by AASB 119 *Employee Benefits*.
- (iii) Unused non-vesting sick leave – not recognised, as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.
- (iv) On-costs, such as payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment – recognised as liabilities and expenses where the employee benefits to which they relate have been recognised.
- (v) The Commission's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity.

1. Summary of significant accounting policies (continued)

(vi) The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(vii) Other Provisions exist when: the Commission has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle an obligation; and a reliable estimate can be made of the amount of the obligation.

(k) Income Recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

Parliamentary Appropriations and Contributions

Parliamentary appropriations are generally recognised as income when the Commission obtains control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to the above is when appropriations are unspent at year end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are accounted for as liabilities rather than revenue.

(l) Impairment of Financial Assets

All financial assets are subject to an annual review for impairment. An allowance for impairment is established when there is objective evidence that the entity will not be able to collect all amounts due.

Any reversals of impairment losses are reversed through the Income Statement, where there is objective evidence. Reversal of impairment losses of financial assets carried at amortised cost cannot result in a carrying amount that exceeds what the carrying amount would have been had there not been an impairment loss.

(m) Receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets are recognised initially at fair value, usually based on the transaction cost or face value. Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(n) New Australian Accounting Standards issued but not effective

At the reporting date, a number of Accounting Standards adopted by the AASB had been issued but are not yet adopted as per NSW Treasury Circular TC 10/08.

- AASB 9 and AASB 2009-11 regarding financial instruments
- AASB 2009-5 regarding annual improvements

(o) Administrative Restructure

On 1 January 2011, the functions and responsibilities of Privacy NSW were transferred from the Attorney General's Division, Department of Attorney General and Justice to the Information and Privacy Commission.

Consequently, the financial results of the Privacy Commission for the six months ended 30 June 2011 are included in the financial results of the Information and Privacy Commission. The financial results of the Privacy Commission for the six months ended 31 December 2010 are included in the financial results of the Attorney General's Division.

(p) Equity Transfers

The transfer of net assets between agencies as a result of an administrative restructure, transfer of programs/functions or parts thereof between NSW public sector agencies and "equity appropriations" are designated or required by Accounting Standards to be treated as contributions by owners and recognised as an adjustment to "Accumulated Funds". This treatment is consistent with AASB 1004 *Contributions* and Australian Interpretation 1038 *Contributions by Owners made to wholly-owned Public Sector Entities*.

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

2. Expenses excluding losses

(a) Employee-related expenses

	2011 \$
Salaries and salaries related	1,356,313
Recreation Leave	(35,140)
Payroll Tax & FBT	47,291
Superannuation – Defined Contribution Plan	91,555
LSL, Super & Payroll Tax Assumed by Crown	19,479
Total	1,479,497

(b) Other operating expenses include the following:

	2011 \$
Administration Fees	297,546
Advertising and Publicity	45,093
Legal Services	3,900
Miscellaneous Fees	6,589
Auditor's remuneration – audit of financial report	15,500
Insurance – Public Liability*	(17,664)
Rental	215,343
Printing	28,872
Postage & Freight	4,118
Telephone	34,461
Computer Related Expenses	162,670
Stores Cost	21,045
Minor Equipment	5,478
Staff Training and Other Expenses	16,531
Travel	7,673
Miscellaneous	127,457
Total	974,612

* Credit balance due to over accrual of estimated insurance costs at previous year end.

(c) Depreciation and amortisation expense

	2011 \$
Computer equipment	6,698
Furniture and fittings	(24)
Office equipment	0
Voice communications	2,011
Plant and Equipment	1,248
Leasehold Improvements	10,365
Intangible assets – software	53,436
Total	73,734

3. Revenue

	2011 \$
Investment Revenue	74,260
Other Revenue	50,000
Total	124,260

4. Gain/(loss) on disposal

	2011 \$
Disposal of assets	
Proceeds from disposal	0
Less: written down value of assets disposed	0
Total	0

5. Appropriations

Recurrent appropriations

	2011 \$
Total recurrent draw-downs from NSW Treasury (per Summary of Compliance)	3,711,000
Less:	
Liability to Consolidated Fund (per Summary of Compliance)	(415,111)
	3,295,889
Comprising:	
Recurrent appropriations (per Statement of Comprehensive Income)	3,295,889
	3,295,889

Capital appropriations

	2011 \$
Total capital draw-downs from NSW Treasury (per Summary of Compliance)	283,563
Less:	
Liability to Consolidated Fund (per Summary of Compliance)	(13,563)
	270,000
Comprising:	
Capital appropriations (per Statement of Comprehensive Income)	270,000
	270,000

6. Acceptance by the Crown Entity of employee benefits and other liabilities

	2011 \$
The following liabilities and/or expenses have been assumed by the Crown Entity:	
Superannuation	33,142
Long service leave	(15,469)
Payroll tax	1,806
	19,479

7. Current assets – cash assets

For the purposes of the Statement of Cash Flows, cash includes cash at bank and cash on hand. Cash at the end of the reporting period as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:

	2011 \$
Cash at bank	417,459
Cash on hand	500
Closing Cash	417,959

8. Current/non-current assets – receivables

Current

	2011 \$
Debtors	513,652
GST Receivables	211,171
Corporate Credit Card	1,623
Accrued Income (Interest)	36,030
Total	762,476

- (a) All related expenditure and revenue is initially paid/received by the Department of Attorney General and Justice, which then seeks reimbursement from the Commission.

Non-current

	2011 \$
Total	0

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

9. Non-current assets – plant and equipment

Plant and equipment

	2011 \$
As at 30 June 2011 Fair Value Gross carrying amount	305,700
Less accumulated depreciation	49,721
Total Plant and Equipment at fair value	255,979

Reconciliation

A reconciliation of the carrying amount of each class of plant and equipment during the current financial period is set out below:

	<i>Computer Equipment</i> \$	<i>Office Equipment</i> \$	<i>Furniture and Fittings</i> \$	<i>Voice Communications</i> \$	<i>Plant and Equipment</i> \$	<i>Leasehold Improvements</i> \$	<i>Total Plant and Equipment</i> \$	<i>Total Property, Plant and Equipment</i> \$
2011								
Gross Carrying Amount								
Balance at 30 June 2010	55,756	0	4,894	19,740	12,824	210,799	304,013	304,013
Additions	0	0	183	984	0	520	1,687	1,687
Disposals	0	0	0	0	0	0	0	0
Balance at 30 June 2011	55,756	0	5,077	20,724	12,824	211,319	305,700	305,700
Accumulated Depreciation								
Balance at 30 June 2010	3,427	0	122	987	259	2,541	7,336	7,336
Depreciation for the year	13,939	0	2,807	4,112	2,428	19,099	42,385	42,385
Writeback on Disposals	0	0	0	0	0	0	0	0
Balance at 30 June 2011	17,366	0	2,929	5,099	2,687	21,640	49,721	49,721
Net Carrying Amount at fair value								
At 30 June 2011	38,390	0	2,147	15,625	10,137	189,680	255,979	255,979

10. Non-current assets – intangible assets – software

	2011 \$
As at 30 June 2011 Fair Value	
Gross carrying amount	706,926
Less accumulated depreciation	57,287
Net Carrying Amount	649,638

Reconciliation

A reconciliation of the carrying amount of software during the current financial period is set out below:

	2011 \$
Gross Carrying Amount	
Balance at 30 June 2010	438,515
Additions	268,411
Disposals	
Balance at 30 June 2011	706,926
Accumulated Depreciation	
Balance at 30 June 2010	81
Amortisation Expense	57,206
Writeback on Disposals	0
Balance at 30 June 2011	57,287
Net Carrying Amount at fair value at 30 June 2011	649,638

The Gross carrying amount includes Work-In-Progress Intangibles of \$31,762.

11. Current liabilities – payables

	2011 \$
Monies paid by the Department of Attorney General and Justice on behalf of the Commission	284,581
Sundry Accruals	104,281
Total	388,862

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

12. Current/non-current liabilities-provisions

	2011 \$
Current	
Recreation Leave	180,051
Long Service Leave Oncosts	6,680
Make Good Provision	86,941
Total	273,672
Non-current	
Long Service Leave Oncosts	0
Provision for Superannuation	0
Total	0

13. Current liabilities – other

	2011 \$
Liability to Consolidated Fund	428,674
Total	428,674

14. Notes to the Statement of Cash Flows

Reconciliation of Cash Flows from Operating Activities
to Net Cost of Services:

	2011 \$
Net Cost of Services	(2,403,583)
Depreciation	73,734
Other (Gains)/Losses	
(Increase)/Decrease in Receivables and Prepayments	(606,169)
Increase/(Decrease) in Provisions	86,941
Increase/(Decrease) in Payables	9,863
Net cash flows from Government	1,789,563
Net Cash Flows from Operating Activities	(1,049,653)

15. Administrative restructure

This note includes comparative information for the statement of comprehensive income of Privacy NSW and discloses the assets and liabilities transferred.

	Statement of Comprehensive Income Position for Privacy NSW			Statement of Comprehensive Income for OIC		
	Actual Six months ended 31 December 2010 \$	Actual Year ended 30 June 2011 \$	Actual Year ended 30 June 2010 \$	Actual Six months ended 31 December 2010 \$	Actual Year ended 30 June 2011 \$	Actual Year ended 30 June 2010 \$
Expenses excluding losses						
Operating expenses						
Employee related expenses	361,053	382,764	839,979	1,193,629	2,651,415	793,724
Other operating expenditure	73,452	75,624	133,703	277,515	1,249,955	1,105,590
Operating expenses	434,505	458,388	973,682	1,471,144	3,901,370	1,899,314
Depreciation and amortisation	20,721	33,424	43,783	25,858	86,889	7,417
Grants and subsidies	0	0	0	0	0	0
Finance costs	0	0	0	0	0	0
Other expenditure	0	0	0	0	0	0
Total expenses excluding losses	455,226	491,812	1,017,465	1,497,002	3,988,259	1,906,731
Revenue						
Other revenue	0	0	(224)	(15,238)	(139,498)	0
Total revenue	0	0	(224)	(15,238)	(139,498)	0
Gain/(loss) on disposal of assets	0	0	59	0	0	0
Other Gains/(Losses)	0	0	59	0	0	0
NET COST OF SERVICES	455,226	491,812	1,017,300	1,481,764	3,848,761	1,906,731
Government Contributions						
Recurrent appropriation	0	0	0	1,951,000	5,246,889	1,078,369
Capital appropriation	0	0	0	0	270,000	205,617
Acceptance by the CE of employee entitlements and other liabilities	0	0	0	3,646	23,125	26,696
	0	0	0	1,954,646	5,540,014	1,310,682
SURPLUS/(DEFICIT) FOR THE PERIOD	(455,226)	(491,812)	(1,017,300)	472,882	1,691,253	(596,049)

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

15. Administrative restructure (continued)

	Statement of Financial Position for Privacy NSW			Statement of Financial Position for OIC		
	Actual 31 December 2010 \$	Actual 30 June 2011 \$	Actual 30 June 2010 \$	Actual 31 December 2010 \$	Actual 30 June 2011 \$	Actual 30 June 2010 \$
ASSETS						
Current Assets						
Cash assets	0	0	0	1,602,537	417,959	2,070,226
Receivables	0	0		156,307	762,476	134,696
Total Current Assets	0	0	0	1,758,844	1,180,435	2,204,922
Non-Current Assets						
Receivables	0	0	0	0	0	0
Plant and Equipment	0	0	0	276,276	255,978	296,676
Intangible Assets	0	0	0	568,149	649,638	438,434
Total Non-Current Assets	0	0	0	844,425	905,616	735,110
Total Assets	0	0	0	2,603,269	2,086,051	2,940,032
LIABILITIES						
Current Liabilities						
Payables	0	0	0	347,096	388,862	1,241,467
Provisions	63,774	70,639	47,724	174,339	266,807	89,616
Other	0	0	0	2,205,000	428,674	2,205,000
Total Current Liabilities	63,774	70,639	47,724	2,726,435	1,084,343	3,536,083
Non-Current Liabilities						
Provisions	0	0	0	0	0	0
Total Non-Current Liabilities	0	0	0	0	0	0
Total Liabilities	63,774	70,639	47,724	2,726,435	1,084,343	3,536,083
Net Assets/(Liabilities)	(63,774)	(70,639)	(47,724)	(123,166)	1,001,708	(596,051)
Increase in net liabilities from equity transfer	(63,774)	(70,639)		(123,166)	1,001,708	

16. Budget review note

Total expenses excluding losses

The actual net cost of services exceed budget by \$110,542, due to reduced expenditure on employee related expenses (\$214,845), offset by higher other operating expenses (\$441,912) and higher depreciation (\$7,734).

Investment revenue of \$74,260 was not budgeted for nor was Other income of \$50,000.

Government contributions of \$3,295,889 exceeded budget by \$791,889 mainly due to a refund of unspent recurrent funds as at 30 June 2010 by NSW Treasury, offset by a liability to consolidated fund of \$428,674 as at 30 June 2011.

Assets and liabilities

Total net assets were greater than budget by \$209,500, mainly due to cash assets, receivables and liabilities not included in the budget and a reduction in the amount of non-current assets compared with budget by \$971,384.

Cash flows

Cash flows from operating activities – Under the Financial Reporting Code for Budget Dependent General Government Agencies, the actual cash flows from operating activities are prepared inclusive of GST, whereas the budget is prepared in accordance with NSW Treasury guidelines and are exclusive of GST. As a consequence, budget variances are overstated by the GST amount. Net cash flows from operating activities were lower than budget by \$1,510,611, due to the 2010 liability to consolidated fund of \$2,205,000 relating to the 2010 recurrent and capital allocations.

Cash flows from investing activities exceeded budget by \$134,925, due to the large capital accrual as at 30 June 2010, which was settled during the 2010/11 financial year.

17. Financial instruments

The Commission's principal financial instruments are outlined below. These financial instruments arise directly from the Commission's operations or are required to finance the Commission's operations. The Commission does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The Commission's main risks arising from financial instruments are outlined below, together with the Commission's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout this financial statements.

The Information Commissioner has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are being established to identify and analyse the risks faced by the Commission, to set risk limits and controls and to monitor risks. Compliance with policies will be reviewed by the Commission on a continuous basis.

(a) Financial Instrument Categories

	Note	Category	Carrying Amount June 2011 \$
Financial Assets			
Class			
Cash assets	7	N/A	417,959
Receivables ⁽¹⁾	8	Receivables at amortised cost	551,305
Financial Liabilities			
Class			
Payables ⁽²⁾	11	Financial liabilities measured at amortised cost	388,862

(1) Excludes statutory receivables and prepayments (i.e. not within the scope of AASB 7).

(2) Excludes unearned revenue (i.e. not within the scope of AASB 7).

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

17. Financial instruments (continued)

(b) Credit Risk

Credit risk arises when there is the possibility of the Commission's debtors defaulting on their contractual obligations, resulting in a financial loss to the Commission. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment).

Credit risk arises from the financial assets of the Commission, including cash and receivables. No collateral is held by the Commission. The Commission has not granted any financial guarantees.

Cash

Cash comprises cash on hand and bank balances. Interest is earned on daily bank balances.

Receivables – trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectibility of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letter of demand. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. Sales are made on 30 day terms.

The Commission is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. There are no debtors which are currently not past due or impaired whose terms have been renegotiated.

June 2011	\$ Total	\$ Past due but not impaired	\$ Considered impaired
< 3 months overdue	37,653	37,653	0
> 3 months – < 6 months overdue	0	0	0
> 6 months overdue	0	0	0

The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7.

(c) Liquidity Risk

Liquidity risk is the risk that the Commission will be unable to meet its payment obligations when they fall due. The Commission continuously manages risk through monitoring future cash flows and maturities planning to ensure adequate holding of high quality liquid assets.

During the current year, there was no default or breach on any loans payable. No assets have been pledged as collateral. The Commission's exposure to liquidity risk is deemed insignificant based on current assessment of risk.

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received.

17. Financial instruments (continued)

The table below summarises the maturity profile of the Commission's financial liabilities, together with the interest rate exposure.

Interest Rate Exposure							
2011	Weighted Average Effective Interest Rate	Nominal Amount \$	Variable Interest Rate	Non-interest bearing \$	Maturity Dates		
					<1yr	1-5 yrs	>5yrs
Financial Liabilities							
Payables	0	388,862		388,862			
		388,862		388,862	0	0	0

(d) Market Risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Commission's exposures to market risk are primarily through interest rate risk on the Commission's borrowings and other price risks associated with the movement in the unit price of the Hour Glass Investment facilities. The Commission has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on operating performance and equity due to a reasonably possible change in risk variable is outlined in the information below, for interest rate risk and other price risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Commission operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the statement of financial position date. The analysis assumes that all other variables remain constant.

Interest rate risk

Exposure to interest rate risk arises primarily through the Commission's interest bearing liabilities. This risk is minimised by undertaking mainly fixed rate borrowings, primarily with NSW TCorp. The Commission does not account for any fixed rate financial instruments at fair value through profit or loss or as available for sale. Therefore for these financial instruments a change in interest rates would not affect profit or loss or equity. A reasonably possible change of +/- 1% is used, consistent with current trends in interest rates. The basis will be reviewed annually and amended where there is a structural change in the level of interest rate volatility. The Commission's exposure to interest rate risk is set out below.

2011	Carrying Amount \$	-1%		+1%	
		Profit \$	Equity \$	Profit \$	Equity \$
Financial Assets					
Cash assets	417,959	(4,180)	(4,180)	4,180	4,180
Receivables	762,476	0	0	0	0
Financial Liabilities					
Payables	388,862	0	0	0	0

Our financial performance

Notes to and forming part of the financial statements
For the period ended 30 June 2011

17. Financial instruments (continued)

(e) Fair Value

Financial instruments are generally recognised at cost.

The amortised cost of financial instruments recognised in the balance sheet approximates the fair value, because of the short term nature of many of the financial instruments.

18. Commitments

	2011 \$
(a) Capital Commitments	
Aggregate capital expenditure contracted for at balance date and not provided for:	
Not later than one year	22,801
Later than one year and not later than five years	0
Later than five years	0
Total (including GST)	22,801
(b) Operating Lease Commitments	
Future non-cancellable operating lease rentals not provided for and payable:	
Not later than one year	332,824
Later than one year and not later than five years	229,321
Later than five years	
Total (including GST)	562,145

The operating lease commitment relates to a lease currently held in relation to the occupancy of premises by the Office in the Sydney CBD.

The total "Capital Commitments" and "Operating Lease Commitments" include input tax credits \$53,177, which are expected to be fully recoverable from the ATO.

19. CONTINGENT LIABILITIES

The Commission is unaware of any matters that may lead to any significant contingent liability.

20. AFTER BALANCE DATE EVENTS

There are no after balance date events.

End of Audited Financial Statements.

Appendix 1 – Access applications under Schedule 2 of the GIPA Act

Statistical information about access applications made to IPC

Statistical information about access applications made to our office during the reporting year is set out in the following tables – the form required by Schedule 2 to the GIPA Regulation.

Table A: Number of applications by type of applicant and outcome*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	–	–	–	–	–	–	–	1
Members of Parliament	–	–	–	–	–	–	–	–
Private sector business	–	–	–	–	–	–	–	–
Not for profit organisations or community groups	–	–	–	–	–	–	–	–
Members of the public (application by legal representative)	–	–	–	–	–	–	–	–
Members of the public (other)	–	–	–	1	–	–	–	–

* More than one decision can be made in respect of a particular access application and a recording must be made in relation to each such decision (similarly applicable to Table B).

Appendices

Table B: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*	-	-	-	-	-	-	-	-
Access applications (other than personal information applications)	-	-	-	-	-	-	-	1
Access applications that are partly personal information applications and partly other	-	-	-	1	-	-	-	-

Table C: Invalid applications

Reason for invalidity	No of applications
Application does not comply with formal requirements (section 41 of the Act)	-
Application is for excluded information of the agency (section 43 of the Act)	-
Application contravenes restraint order (section 110 of the Act)	-
Total number of invalid applications received	-
Invalid applications that subsequently became valid applications	-

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	Number of times consideration used*
Overriding secrecy laws	-
Cabinet information	-
Executive Council information	-
Contempt	-
Legal professional privilege	-
Excluded information	-
Documents affecting law enforcement and public safety	-
Transport safety	-
Adoption	-
Care and protection of children	-
Ministerial code of conduct	-
Aboriginal and environmental heritage	-

Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act

	Number of occasions when application not successful
Responsible and effective government	–
Law enforcement and security	–
Individual rights, judicial processes and natural justice	–
Business interests of agencies and other persons	–
Environment, culture, economy and general matters	–
Secrecy provisions	–
Exempt documents under interstate Freedom of Information legislation	–

Table F: Timeliness

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	1
Decided after 35 days (by agreement with applicant)	–
Not decided within time (deemed refusal)	–
Total	1

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review	–	–	–
Review by Information Commissioner*	–	–	–
Internal review following recommendation under section 93 of Act	–	–	–
Review by ADT	–	–	–
Total	–	–	–

Table H: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	–
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	–

Appendices

Appendix 2 – Information Protection Principles (IPPs)

The PPIP Act states its purpose is to provide for the protection of personal information and the protection of the privacy of individuals generally. The Office of the Privacy Commissioner aims to promote and uphold the Information Protection Principles (IPPs) in the PPIP Act by fulfilling the Office of the Privacy Commissioner's statutory functions, which include educating and advising NSW public sector agencies about their obligations under the IPPs.

The Information Protection Principles are:

Collection

- 1. Lawful** – when an agency collects your personal information, the information must be collected for a lawful purpose. It must also be directly related to the agency's activities and necessary for that purpose.
- 2. Direct** – your information must be collected directly from you, unless you have given your consent otherwise. Parents and guardians can give consent for minors.
- 3. Open** – you must be informed that the information is being collected, why it is being collected and who will be storing and using it. The agency should also tell you how you can see and correct this information.
- 4. Relevant** – the agency must ensure that the information is relevant, accurate, up-to-date and not excessive. The collection should not unreasonably intrude into your personal affairs.

Storage

- 5. Secure** – your information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

Access

- 6. Transparent** – the agency must provide you with enough details about what personal information they are storing, why they are storing it and what rights you have to access it.
- 7. Accessible** – the agency must allow you to access your personal information without unreasonable delay and expense.
- 8. Correct** – the agency must allow you to update, correct or amend your personal information where necessary.

Use

- 9. Accurate** – agencies must make sure that your information is accurate before using it.
- 10. Limited** – agencies can only use your information for the purpose for which it was collected, for a directly related purpose, or for a purpose to which you have given your consent. It can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety.

Disclosure

- 11. Restricted** – the agency can only disclose your information with your consent or if you were told at the time they collected it from you that they would do so. The agency can also disclose your information if it is for a related purpose and they don't think that you would object. Your information can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety.
- 12. Safeguarded** – the agency cannot disclose your sensitive personal information without your consent, for example information about your ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership. It can only disclose sensitive information without your consent in order to deal with a serious and imminent threat to any person's health or safety.

Appendix 3 – Health Privacy Principles (HPPs)

The Office of the Privacy Commissioner aims to promote the Health Privacy Principles (HPPs) to health service providers in the public and private sectors, as well as to members of the public. The 15 HPPs are the key to the HRIP Act and can be found in Schedule 1 of the Act. They are legal obligations describing what agencies and private sector persons must do when they collect, hold, use and disclose health information.

The Health Privacy Principles are:

Collection

- 1. Lawful** – when an organisation collects your health information, the information must be collected for a lawful purpose. It must also be directly related to the organisation's activities and necessary for that purpose.
- 2. Relevant** – the organisation must ensure that your health information is relevant, accurate, up to date and not excessive. The collection should not unreasonably intrude into your personal affairs.
- 3. Direct** – your health information must be collected directly from you, unless it is unreasonable or impracticable for the organisation to do so.
- 4. Open** – you must be told why your health information is being collected, what will be done with it, and who else might see it. You must also be told how you can see and correct your health information and any consequences if you decide not to provide it.

Even if an organisation collects health information about you from someone else, they must still take reasonable steps to ensure that you are aware of the above points.

Storage

- 5. Secure** – your health information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

Access and accuracy

- 6. Transparent** – the organisation must provide you with details about what health information they are storing about you, why they are storing it and what rights you have to access it.

- 7. Accessible** – the organisation must allow you to access your health information without unreasonable delay or expense.
- 8. Correct** – the organisation must allow you to update, correct or amend your health information where necessary.
- 9. Accurate** – the organisation must make sure that your health information is relevant and accurate before using it.

Use

- 10. Limited** – the organisation can only use your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only use it with your consent (unless one of the exemptions in HPP 10 applies).

Disclosure

- 11. Limited** – the organisation can only disclose your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only disclose it with your consent (unless one of the exemptions in HPP 11 applies).

Identifiers and anonymity

- 12. Not identified** – an organisation can only give you an identification number if it is reasonably necessary to carry out their functions efficiently.
- 13. Anonymous** – you are entitled to receive health services anonymously, where this is lawful and practicable.

Transferrals and linkage

- 14. Controlled** – your health information can only be transferred outside New South Wales in accordance with HPP 14.
- 15. Authorised** – your health information can only be included in a system to link health records across more than one organisation if you expressly consent to this.

Appendices

Appendix 4 – Payment of accounts

For year ended 30 June 2011

Supplier accounts paid on time				
Quarter	Target %	Actual %	Current \$000	Total payments \$000
September 2010	100	99	–	160,016
December 2010	100	97	–	208,950
March 2011	100	91	–	262,948
June 2011	100	90	–	450,161

The IPC Accounts Payable function is performed by DAGJ as part of an agreement for the provision of corporate services. The Commission in conjunction with DAGJ minimises processing delays and monitors and improves payment performance by the:

- review of payment performance reports on a quarterly basis to identify any procedural issues
- increased use of electronic funds transfer (EFT) for payment of creditors
- payment of major suppliers such as Australia Post, Corporate Express and electricity suppliers by way of consolidated billing
- amalgamation of processing and payment functions as part of ongoing corporate services reform.

Executive management reviews the quarterly payment performance reports to identify any issues arising and takes appropriate measures to improve compliance in accordance with NSW Treasury guidelines. There were no instances of penalty interest for late payment during the year ended 30 June 2011.

Our complaints process

Complaining to the IPC

If you are dissatisfied with the level of service you have received from the IPC you can make a complaint about privacy and information access services.

Resolving the issue informally

To enable the IPC to deal with your complaint promptly, please raise the issue with the relevant staff member when it occurs. If you are unhappy with their response, ask to speak to their supervisor. The supervisor will listen to your concerns and try to resolve them. If appropriate, the supervisor will escalate the matter internally.

If the supervisor is not immediately available, they will contact you by phone or in writing as soon as possible with a view to promptly resolving your issue. If you still remain dissatisfied, you can make a formal complaint.

Making a formal complaint

To make a formal complaint, please write, email or fax your complaint to the IPC. You will need to advise whether your complaint concerns services you have received from our information access or our privacy areas. Matters can be addressed directly to either the Information Commissioner or the Privacy Commissioner. See contact details, inside back cover.

post: Information and Privacy Commission
GPO Box 7011
Sydney NSW 2000

email: ipcinfo@ipc.nsw.gov.au

fax: (02) 8114 3756

What to include in your letter of complaint

Briefly explain your concerns, describe what happened, when it happened, who was involved and any other information that you believe is relevant for the IPC to assess and resolve your complaint.

In your complaint please tell us what action you have already taken (such as making an informal complaint and what you would like to happen. Include copies of all relevant correspondence.

How the IPC deals with formal complaints

Your complaint will be dealt with by someone more senior than the person you have complained about.

The investigator will:

- acknowledge your complaint within three business days
- discuss the complaint with the relevant staff member
- if required, escalate the complaint to a manager
- respond to you in writing within 15 working days.

If after receiving a response to your formal complaint you are still dissatisfied, you can ask the relevant Commissioner to review the matter.

Write to the Joint Committee

If your complaint is about either the Information Commissioner or the Privacy Commissioner, or if you are dissatisfied with the handling of your complaint by a Commissioner, you can write to the Joint Parliamentary Committee that oversees the IPC.

post: Committee on the Office of the Ombudsman
and the Police Integrity Commission
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

If you believe there has been corruption or serious misconduct

The Independent Commission against Corruption (ICAC) has primary responsibility for dealing with complaints about corrupt conduct. Corrupt conduct is intentional or deliberate misdoing, such as a staff member improperly using their knowledge, power or resources for personal gain or the advantage of others.

The NSW Ombudsman has responsibility for dealing with complaints about conduct that is illegal, unreasonable, unjust, oppressive, discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong.

If you think there may have been such misconduct and you are dissatisfied with how your complaint has been handled by the IPC, you can contact ICAC or the NSW Ombudsman.

Agency

Independent Commission Against Corruption

freecall: 1800 463 909

website: www.icac.nsw.gov.au

NSW Ombudsman

freecall: 1800 451 524

website: www.ombo.nsw.gov.au

Glossary

ADT	Administrative Decisions Tribunal
DAGJ	Department of Attorney General and Justice (formerly known as the Department of Justice and Attorney General)
FOI	<i>Freedom of Information Act 1989</i>
GIIC	<i>Government Information (Information Commissioner) Act 2009</i>
GIPA	<i>Government Information (Public Access) Act 2009</i>
GIPAR	<i>Government Information (Public Access) Regulation 2009</i>
HPP	Health Privacy Principles
HRIPA	<i>Health Records and Information Privacy Act 2002</i> (NSW) (HRIP Act)
ICAC	Independent Commission Against Corruption
IPP	Information Privacy Principles
IPC	Information and Privacy Commission
LGMA	Local Government Managers Australia (NSW)
OIC	Office of the Information Commissioner New South Wales
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i> (NSW)
PSEM	<i>Public Sector Employment and Management Act 2002</i>
RTA	Roads and Traffic Authority

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