



Accessing a deceased person's information under the GIPA Act

This fact sheet outlines factors relevant to an application to access a deceased person's records under the *Government Information (Public Access) Act 2009*.

When a person dies, there are circumstances where family members and other interested parties may wish to access information about the deceased person from government agencies and health care providers.

In NSW, the relevant laws include the:

- *Government Information (Public Access) Act 2009* (GIPA Act).
- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)

If the information you are seeking is held by a NSW public sector agency, you can apply for access to the information under the GIPA Act. Details on how to make a GIPA application are available on our [website](#).

Seeking access under the GIPA Act

If you apply for information under the GIPA Act, an agency generally must make a decision whether to provide access and notify you of their decision within 20 working days, unless you agree to extend the time. If you are unhappy with the agency's decision, you can request a review (information on your review rights under the GIPA Act is provided below).

An application for a deceased person's information is likely to include personal information, which is defined under the GIPA Act as information or an opinion about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. Information about an individual who has been dead for more than 30 years is not considered to be personal information.¹

Factors in favour of disclosure

Under the GIPA Act, there is a general presumption in favour of disclosing information, unless there is an overriding public interest against disclosure.

If you are seeking access to a deceased person's information, the following personal factors may be taken into account by an agency considering your application:

- your identity and relationship with any other person (including the deceased person)
- your motives for making the access application, and
- any other personal factors particular to you.²

Where a close family member is seeking access to information about a deceased relative (for example, to better understand their relative's death and to gain closure), this is likely to be a factor in favour of disclosure.³ The GIPA Act also provides some examples of public interest considerations in favour of disclosure, including where disclosure of the information could reasonably be expected to:

- promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance
- inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public
- ensure effective oversight of the expenditure of public funds, and
- reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.⁴

In addition to these examples in the GIPA Act, an agency may take into account any other relevant public interest considerations in favour of disclosure.

¹ GIPA Act, Schedule 4

² GIPA Act section 55

³ *Khoo v South Western Sydney Local Health District* [2015] NSWCATAD 183

⁴ GIPA Act section 12

These considerations are not limited and may be unique to the circumstances of your application. For example, where the information sought is necessary to enable you to exercise any further legal rights.

Another example recognised in case law is the public interest in the disclosure of information relating to the care of elderly people and people with dementia, and the care and protection of children and people with disabilities. These people are likely to be vulnerable and the disclosure of information could enhance transparency and improve protection against exploitation or neglect⁵.

Sometimes these types of factors will also enliven broader public interest considerations such as the adequacy of aged care. These public interest considerations may extend beyond the personal reasons for seeking information. In these types of applications it is important to consider the costs associated with some GIPA Act applications as there may be circumstances in which fees can be lowered or waived by the agency.⁶

You should ask the agency to provide you with advice and or assistance regarding any costs that may be associated with the application.

Considerations against disclosure

There is an overriding public interest against disclosure of government information if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

In making a determination as to whether there is an overriding public interest against disclosure of information, agencies must exercise their functions so as to promote the object of the GIPA Act, and must have regard to any relevant guidelines issued by the Information Commissioner (see below).⁷ Key considerations for an agency when access is sought to a deceased person's information will be whether disclosure of information:

- would reveal an individual's personal information, and/or
- contravene an information protection principle under the PPIP Act or a health privacy principle under the HRIP Act.

These are both considerations against disclosure listed in section 14 of the GIPA Act. Other relevant considerations under section 14 may include where the disclosure of information could reasonably be expected to:

- prejudice the supply to an agency of confidential information that facilitates the effective exercise of its functions;

- prejudice the effective exercise of an agency's functions.

An agency cannot rely on a public interest consideration against disclosure that is not listed in the GIPA Act.

Irrelevant considerations

The GIPA Act confirms irrelevant matters that cannot be taken into account by agencies as public interest considerations against disclosure.⁸ Specifically, an agency cannot consider whether disclosure could embarrass the Government or reduce public confidence in it, or whether the person seeking access will misinterpret or misunderstand any information that is given to them.

Review rights under the GIPA Act

If your application for access to a deceased person's information is refused by an agency, you may have the right to request a review of this decision. Your review rights generally include three review options:

1. Internal review by the agency
2. External review by the Information Commissioner
3. External review by the NSW Civil and Administrative Tribunal.

The IPC has published a fact sheet on your [review rights under the GIPA Act](#).

Other useful resources

To assist agencies to manage applications for personal information made under the GIPA Act, the Information Commissioner has published relevant guidelines, including:

- [Guideline 4: Personal Information as a public interest consideration under the GIPA Act](#)
- [Guideline 5: Consultation on public interest considerations under section 54 of the GIPA Act](#)

The Privacy Commissioner has also published a fact sheet specifically on [access to a deceased person's health information](#) under the HRIP Act.

For more information

Contact the Information and Privacy Commission NSW (IPC):

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

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NOTE: The information in this Fact Sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

⁵ *Khoo v South Western Sydney Local Health District* [2015] NSWCATAD 183

⁶ GIPA Act Part 4 Division 5

⁷ GIPA Act section 15(b)

⁸ GIPA Act section 15(c) and (d)