

# Information Commissioner's Update

**Presentation to the Practitioners' Network Forum**

19 May 2021

**Elizabeth Tydd**

IPC CEO, Information Commissioner  
NSW Open Data Advocate

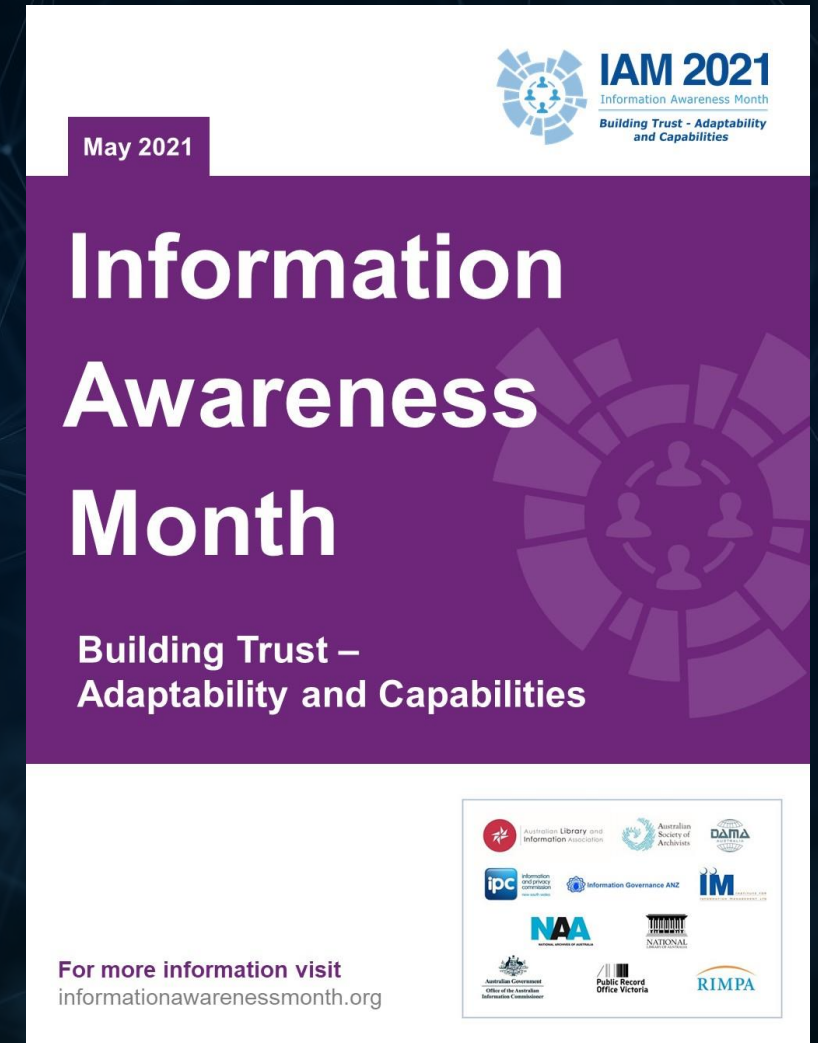


information and  
privacy commission  
new south wales

# Information Awareness Month (IAM) 2021

May 2021

- Brings together bodies in the records, archives, library, knowledge, information & data management communities to promote public awareness of information and improve information management practices across Australia
- Theme is **Building Trust – Adaptability and Capabilities**



The poster for Information Awareness Month 2021 features a purple and white color scheme. At the top right is the IAM 2021 logo with the tagline 'Building Trust - Adaptability and Capabilities'. A purple box on the left contains the text 'May 2021'. The main title 'Information Awareness Month' is written in large white letters on a purple background. Below the title, the theme 'Building Trust – Adaptability and Capabilities' is displayed. The bottom section contains a grid of logos for partner organizations: Australian Library and Information Association, Australian Society of Archivists, DAMA, ipc, Information Governance ANZ, IM, NAA, NATIONAL, Australian Government Office of the Australian Information Commissioner, Public Record Office Victoria, and RIMPA.

May 2021

**Information Awareness Month**

Building Trust – Adaptability and Capabilities

For more information visit [informationawarenessmonth.org](http://informationawarenessmonth.org)



# Open Government Week (OGW) 2021

17 to 21 May 2021

- Theme is **Respond. Recover. Renew.**
- It invites open government doers, leaders, and thinkers to come together and share ideas, discuss solutions, and commit to new levels of citizen participation in government to respond to and recover from the COVID-19 pandemic
- Participation in the Open Government Partnership:
  - Australian Third National Action Plan complete and submitted to Government for final consideration
  - NSW led the Open by Design commitment within the Plan
  - IPC is currently seeking nominations from Australian Information Commissioners to the Open by Design working group
- **18 May** - Webinar by InfoGovANZ on the role of governance in data initiatives, privacy and information sharing.



Minister for Digital, Minister for Customer Service, Victor Dominello MP



Information Commissioner, IPC CEO, NSW Open Data Advocate, Elizabeth Tydd



NSW Chief Data Scientist and CEO of Data Analytics Centre, Ian Oppermann



Founder and Executive Director of InfoGovANZ, Susan Bennett (Facilitator)

# NSW Government Information and Privacy Advisory Committee

The Committee is established under the PPIP Act, and performs the functions set out under that Act to: provide advice on matters relevant to the functions relevant to the Information Commissioner and Privacy Commissioner and to advise the Minister on matters referred to it by the Minister.

The Committee consists of the Information Commissioner (Chairperson) and Privacy Commissioner, Ms Samantha Gavel, alongside data and legal experts including:

- Mr Barry Sandison, Chief Executive Officer, Australian Institute of Health and Welfare
- Professor Lyria Bennett Moses, Director of the Allens Hub for Technology, Law and Innovation and a Professor in the Faculty of Law at UNSW Sydney
- Mr Malcolm Crompton, Lead Privacy Advisor and founder of Information Integrity Solutions Pty Ltd (IIS)
- Mr Paul McKnight, Deputy Secretary, Department of Communities and Justice
- Mr Peter Leonard, Principal of Data Synergies, a business and legal consultancy for data driven businesses and Professor of Practice at UNSW Business School.

The Committee conducted a second meeting on 11 May 2021.

# Information Commissioner appearance at Budget Estimates

8 March 2021

- The Information Commissioner appeared as a witness for the Department of Customer Service at the 8 March Budget Estimates
- Questions for the Information Commissioner related to:
  - the icare phase 1 and phase 2 compliance audits
  - contract reporting of other NSW government agencies i.e. TfNSW

# IPC Proactive Audit Program and Significant Regulatory Matters

## Current major regulatory action

- Local councils – compliance with Guideline 1
- icare – Phase 2 compliance audit
- Phase 2 – Police Audit - commenced

# Report on the Operation of the GIPA Act 2019-20

## Digital Restart Fund (DRF)

- Drafting of the Report is currently underway
  - IPC completed a desktop audit of mandatory proactive release by 9 principal Departments and a random selection of 20 agencies
  - The Report is scheduled to be tabled in Parliament in July.
- 
- IPC has received a total of 111 projects on a range of initiatives and provided 100 advices to date
  - IPC has developed regulatory advice which sets out the commonly identified risks to information access and privacy rights across projects seeking DRF funding and suggests mitigation strategies
  - The guidance was circulated for consultation and is being finalised, due for release in late May.



# Submission to the NSW Law Reform Commission Open Justice Inquiry

The Attorney General requested a review on the laws that govern the disclosure and publication of court and tribunal information, who can access that information and in what circumstances.

## **Information Access considerations:**

- Automatic statutory prohibitions on publishing or disclosing certain information (e.g. children)
- Undertake public interest test with the view of favour of disclosure of information
- Inclusion of a public interest test in relation to court suppression and non-publication orders
- Open access and restricted access information
- Digital technology and open justice



# Other Joint Submissions

## Submission on the Children's Guardian Regulation 2021

- Register for residential care workers improving transparency and accountability, with appropriate privacy safeguards

## Review of the Data Sharing (Government Sector) Act 2015

- Preliminary feedback provided on draft report, emphasising legislative hierarchy and primacy of principles-based legislation including PPIP Act and GIPA Act.

# Voice to text external review application

- In December 2020, an applicant telephoned the IPC to advise that:
  - he wished to lodge an application for external review by the Information Commissioner
  - he resided in a rural area
  - prior to lodgement of his application by email he experienced a lengthy internet outage
  - outages of this nature are not infrequent in his locality.
- This voicemail message contained the applicant's name, phone number, the Agency, decision date, decision reference number and reason for seeking external review.
- The call was received as a voice to text at 23:50 on day 40, being the last day in which the application to the Information Commissioner could be made in accordance with the statutory timeframe under the GIPA Act.

# Information Commissioner recommendation

The GIPA Act does not prescribe any specific requirements as to the manner and form of an application for external review to the Information Commissioner (Part 5 Division 3) including whether the voicemail constitutes an “application”.

Following consideration of legal advice and with the requisite consent of the applicant, the Information Commissioner referred the application for review to the NCAT (section 99 of the GIPA Act).

The matter requires consideration of legislative and administrative issues, noting that:

- the absence of a prescribed form of application meets the policy objective of informal, low cost accessible external review by the Information Commissioner.
- technology utilised by the IPC and many government agencies provides a voice to text service received as an email. It also enables persons with a disability to exercise their right of review effectively.
- There may be associated implications for other forms of lodgement of applications with NSW public sector agencies and independent decision makers.

# IPC Case Notes

IPC published the following information access case notes since the last Forum which can be found on the IPC website:

- *Zonneville v Department of Customer Service; Zonneville v Secretary, Department of Education* [2021] NSWCATAD 35
- *Miriani v Transport for NSW* [2021] NSWCATAD 16
- *Ruyters v Commissioner of Police* [2021] NSWCATAD 41



# Information Access Resources

**The following information access resources have been updated:**

## **UPDATED:**

- Fact Sheet – Complaints about the actions of agencies

## **UPCOMING**

- Guidance on the Digital Restart Fund

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