

# Information Commissioner's Update

## Presentation to the Practitioners' Network Forum

11 November 2020

Via Microsoft Teams

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information and  
privacy commission  
new south wales

# Right to Know Week NSW 2020

- Thank you to all agencies and practitioners who supported and took part in the campaign, ensuring success again in 2020
- Theme: **Future-proofing information access rights**
- 50 Champion agencies were involved
- During the week, the Information Commissioner:
  - led the RTK video message with Minister Dominello and the Public Service Commissioner
  - spoke at Open Government Partnership webinar on the NAP Open by Design concept
  - spoke at InfoGovANZ webinar on AI Transparency in Digital Government (around 450 registrations)
  - was interviewed for Sydney and regional radio



# Right to Know Week NSW 2020

## During the week, the IPC:

- released the Community Attitudes Survey results on Information Access and Data Sharing
- published a joint statement by Commissioners and Ombudsmen on International Access to Information Day
- released two fact sheets - one for agencies and one for citizens:  
**Automated Decision-making, digital government and preserving information access rights**

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**Fact Sheet**  
**Automated decision-making, digital government and preserving information access rights – for agencies**

This Fact Sheet provides guidance to agencies on the release of information in relation to the use of automated decision-making systems.

It is essential that agencies consider their obligations under the *Government Information (Public Access) Act 2009* (GIPA Act) when developing or applying new technologies and using data to inform decision making.

The object of the GIPA Act is to open government information to the public to maintain and advance a system of responsible and representative democratic government.

The GIPA Act places various obligations on agencies within NSW in respect of the publication and release of the information that they create and hold. The GIPA Act also provides rights for persons to apply for access to government information.

These rights remain applicable where government uses technology to provide services and inform decisions.

**What is automated decision-making?**

An automated decision-making system describes a computerised process that either assists or replaces the judgement of human decision-makers.<sup>1</sup>

This technology can perform many functions that previously could only be done by humans. As these systems are adopted by governments, citizens will increasingly be subject to actions and decisions taken by, or with the assistance of, automated decision-making systems. To fully exercise their rights, it is important that individuals are able to access information on how a decision is made and what information was used to reach that decision.

Automating systems can assist decision-making in a number of ways.

<sup>1</sup> Commonwealth Ombudsman, *Automated Decision making: Better Practice Guide*, 2019.  
<sup>2</sup> Dominique Hogan-Doran SC, "Computer says 'no': automation, algorithms and artificial intelligence in Government decision-making", *The Judicial Review* (2017) 13. <https://www.oicadefacta.transpost.nsw.gov.au/ty/cgsafe/inobdphorons.tech/2019/2/10/>

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**Fact Sheet**  
**Automated decision-making, digital government and preserving information access rights – for citizens**

September 2020

This Fact Sheet provides advice to citizens seeking access to government information.

Increasingly NSW government information is held in digital form, likewise decision-making and services are increasingly automated. This has implications for how governments can improve outcomes for citizens seeking access to government information.

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**What is digital government?**

Digital government, where government agencies seek to improve customer service using digital technologies extends the meaning of government information. In this context, information takes many forms including, source codes, test suites, metadata, documentation, emails, video, photography and CCTV footage. This information is also used in many different and sometimes novel ways including algorithms to support artificial intelligence and machine learning.

To support digital government new ways of providing services to citizens are being implemented including:

- Increasing use of government information in digital form and the creation of new data sets to inform decision making and service delivery
- Arrangements might involve government outsourcing or contracting with a third party to provide traditional government services or to provide the technology that supports those services

- The use of automated decision-making and other inputs to decision-making that are supported by technology.

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Automating systems can assist decision-making in a number of ways. For example, they can:

- Make the decision
- Recommend a decision to the decision-maker
- Guide a user through relevant facts, legislation and policy, closing off irrelevant paths as they go
- Have capabilities as decision-support systems, providing useful commentary for the decision-maker at relevant points in the decision-making process
- Be used as a self-assessment tool, providing preliminary assessments for individuals or internal decision-makers.<sup>2</sup>

**Do citizens have a right to access digital government information?**

Yes. The right to access information under the GIPA Act includes the right to information in digital form.

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# Community Attitudes Survey 2020

## Findings about access to information

- In 2020, the Information Commissioner undertook a study of community attitudes to information access and data sharing in NSW. The results showed:
  - 88% of citizens believed the right to access information as important
  - Over half (59%) of respondents know of their right to access information
  - The great majority felt that it was important for the public to have access to data that was held by government agencies to support:
    - ‘Transparent decision making’ (91%)
    - ‘accountable decision making’ (92%).
  - 74% had success in accessing information

# Community Attitudes Survey 2020

## Views on how agencies are providing assistance

- In 2019, 60% of citizens advised that agencies had been helpful in assisting them to access information.
- In 2020, the IPC conducted a further survey to examine how agencies fulfilled their responsibility to provide advice and assistance to citizens seeking access to information. This survey found that agencies were most effective in providing advice and assistance to citizens when they:
  - outlined the different ways information could be accessed (36%)
  - helped clarify the information sought (32%)
  - explained the process to obtain information by formal access application (28%)
  - followed up the engagement in writing (28%)
  - provided advice about who or what other agency to contact, including how to transfer the application when the information was not held by the agency (25%)



# Community Attitudes Survey 2020

## Improving agency assistance

These results were confirmed in the survey in response to the question:

*How could agencies have improved the assistance?*

- 41% said that the agency could have explained the processes available to obtain information
- 40% said the agency could have provided advice about how to access information
- 29% said that the agency could have referred them to the agency's website
- 27% said the agency could have told them what agency to go to
- 25% said the agency could have talked to them about their request to access information
- 22% said the agency could have told them how to get information about their information access rights
- 18% said the agency could have provided them with an application form to seek access to information

# Community Attitudes Survey 2020

## Improving agency assistance (cont.)

- To be effective in providing advice and assistance, agencies need to provide:
  - advice about the different ways information can be accessed such as websites, documentation and data
  - an explanation about how to obtain information using the four access pathways
  - where relevant transferring the request to a different agency that holds the information
- IPC is working with DCS to ensure that the consolidation of websites project promotes agency compliance and citizens right to access information
- IPC has developed a framework to assist agencies achieve consistent information access pages and to structure their information access webpages in a way that is open and transparent

# IPC Proactive Audit Program

## GIPA Compliance Reports

In early September, the IPC published its Audit Calendar 2020/21 online.

### Published

- Greyhound Racing NSW Compliance Report – September 2020
- Clarence Valley Council Compliance Report – September 2020
- icare Compliance Report Phase 1 – October 2020

### Upcoming

- NSW government agencies – contract register compliance
- Local councils – compliance with Guideline 1



# Submission to the Inquiry into Cybersecurity

- The Commissioners made a joint submission to the Inquiry into Cybersecurity
- It recognised the development & implementation of new technologies & modes of service delivery have the capacity to enhance citizens' experience of government.
- Key information access issues raised in the submission included:
  - the application of the GIPA Act to digital records
  - the role of technology as an enabler for the delivery of more accessible, effective and often lower-cost services, and as an effective tool in combatting corruption by enabling ready access to information and audit mechanisms
  - the increasing adoption of technology demands the preservation, assurance and assertion of information access rights

# State Records Inquiry

## Inquiry into the State Records Act 1998

- The Information Commissioner made a submission to the Inquiry into the State Records Act and appeared before the Parliamentary Standing Committee on Social Issues on 20 August
- The SR Act provides for the creation, management and protection of the records of NSW public offices
- Jurisdictional differences between SR Act and GIPA Act – but both play an important role in information governance and access
- Implications of digitisation and citizens' expectations regarding access to information
- Questions ranged from proposed merger of Sydney Living Museums and SARA to workings of the GIPA Act

# Digital Restart Fund

## Update

- Section 10 of the *Digital Restart Fund Act 2020* requires the Minister to have regard to advice from Commissioners prior to approving funding
- IPC is consulting with DCS on Digital Restart Fund Guidance and procedures

## Digital Restart Fund projects

- IPC has advised on a range of projects, including:
  - Courts and Tribunals Digital Reform
  - Revenue NSW Intelligent Business Automation Capability Uplift
  - Service NSW Proof of Identity Initiative Assurance

# New & Updated Resources

## Essential Guidance Toolkit on information access and privacy fundamentals

- Fundamental regulatory guidance to ensure that agencies are able to meet their requirements under NSW information access legislation.
- It has been arranged on a functional basis that reflects agency, senior executive and decision-maker responsibilities.
- Different versions available for agencies and local government.

## Updated Information Access Self-assessment Tools

- Enables agencies to conduct an assessment of their systems and policies to ensure agency compliance with NSW information access requirements.
- The tools assist agencies in measuring the maturity of their information governance systems and implementing plans to further develop those systems and confidently meet their information access requirements.

# Information Access Resources

## NEW

- Fact Sheet – Automated decision-making, digital government and preserving information access rights – for agencies
- Fact Sheet – Automated decision-making, digital government and preserving information access rights – for citizens
- Fact Sheet – Digital Projects

## UPDATED

- Guide to reporting on agency GIPA operations 2019-20
- Guide – Agency-level GIPA dashboard user guide
- Fact Sheet – Agency-level GIPA dashboard FAQs
- Fact Sheet – State Owned Corporations (SOCs) and your right to government and personal information
- Fact Sheet – Informal release of information
- Fact Sheet – Frequently asked questions: informal release of information

## UPDATED (Cont'd)

- Guideline 6 – Agency Information Guides
- Fact Sheet – Changes to the GIPA Act in 2018 for citizens
- Fact Sheet – Changes to the GIPA Act in 2018 for agencies
- Fact Sheet – Your right to access government information in NSW
- Fact Sheet – GIPA Act fees and charges
- Fact Sheet – Timeframes and extensions for deciding access applications under the GIPA Act
- Fact Sheet – Information for applicants on unreasonable and substantial diversion of resources
- Fact Sheet – Unreasonable and substantial diversion of agency resources
- Fact Sheet – Legal professional privilege and release of government information
- Fact Sheet – Good practice for disclosure logs
- Fact Sheet – Open access information for agencies
- Fact Sheet – Internal reviews under the GIPA Act
- Fact Sheet – Restraint orders under the GIPA Act
- Checklist – Substantial and unreasonable diversion of resources
- Form – GIPA Access Application Form (for other agencies)



# IPC office relocation

**The IPC relocated offices in early October.**

**Our new address is:**

**Level 15, McKell Building  
2-24 Rawson Place  
Haymarket NSW 2000**

**Our postal address remains the same:**

**GPO Box 7011  
Sydney NSW 2001**

# Connect with us



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