



information
and privacy
commission
new south wales

Department of Enterprise, Investment and Trade – GIPA Act Compliance Report

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1. Purpose

This desktop review examined the systems and processes of the Department of Enterprise, Investment and Trade (DEIT) in relation to its compliance with the requirements of the *Government Information (Public Access) Act 2009* (GIPA Act).

The Information and Privacy Commission (IPC) recognises that DEIT is a new department established as a result of the Machinery of Government (MoG) changes which came into effect from 1 April 2022¹. The aim of the review was to proactively engage with DEIT to support and provide guidance as it develops and implements policies and practices to ensure compliance with the GIPA Act whilst the structure and functions of the agency are being finalised.

The review was undertaken in accordance with section 17(g) of the GIPA Act, to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act. Its purpose was to review and assess the DEIT's assessment of its compliance with the GIPA Act. This review was limited to a desktop assessment and review of the DEIT's self-assessment of its compliance alongside a desktop review of its website.

As a regulatory tool a desktop audit is applied in areas of small to moderate risk of non-compliance and may also form the basis of a preliminary assessment. The methodology of a desktop audit should be recognised as constrained by factors including:

- independent remote assessment;
- non inquisitorial;
- focused on identified compliance risks and informed by agency responses.

On that basis it is distinguishable from an onsite audit which can adopt a more direct inquisitorial approach. Accordingly, in general the IPC conducts desktop audits to elevate compliance by way of guidance, awareness raising and in some cases recommendations to an agency. However, poor results or lack of cooperation by an agency may result in further and escalated compliance action.

Accordingly, the focus of this review did not include the content or application of the policies and procedures that DEIT has developed or is developing to fulfil its requirements.

2. Threshold Issues

In conducting any desktop audit or monitoring exercise the IPC must examine the agency's website as a means of assessing compliance with the GIPA Act. In contemporary democratic societies agency websites provide the most effective means of communicating with and providing services to members of the public. IPC research demonstrates that google searches and agency websites are strongly represented as the first point of reference for the citizen seeking information about an agency and its functions.²

In a digital government environment, government has a positive duty to ensure E-governance. In turn, Government agencies have a duty to adopt and promote E-governance.

¹ <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-790>

² <https://www.ipc.nsw.gov.au/sites/default/files/2020-09/NSW%20Community%20Attitudes%20to%20Information%20Access%20-%202020.pdf>

E-governance is defined as:

*.....that stage of e-government that inculcates digital democracy, online citizen participation, and online public discussion along with the aspects of online public service delivery.*³

The GIPA Act legislates to preserve and promote *digital democracy, online citizen participation, and online public discussion*⁴ along with the aspects of online public service delivery as it envisages access to information contained on the agency's website.⁵ Agency websites must *inter alia* disclose the information held by the agency and information that the agency makes publicly available. This nexus between what is held and what is publicly available serves both a pro-integrity purpose and an efficiency purpose for both the agency and the citizen. Those purposes cannot be realised in circumstances where a specific agency's *Access to Information* link serves the purpose of redirecting an applicant or prospective applicant to another agency's website.

This audit found that the website maintained by DEIT redirects an applicant or prospective applicant who clicks the *Access to Information* link to another agency's website being, the Department of Customer Service (DCS).

In the interests of full disclosure, I have provided informal advice to DCS upon their request, that any whole of government website would be required to ensure compliance with the responsibilities of individual agency heads under the GIPA Act including open access requirements.

For the reasons set out below I find that the website maintained by DEIT as currently structured hinders the Agency's ability to meet its obligations under the GIPA Act.

This desk top audit revealed a complexity in obtaining access to information about this agency that did not readily align with the object and spirit of the GIPA Act *in maintaining and advancing a system of responsible and representative democratic Government that is open, accountable, fair and effective.*⁶ The object of the GIPA Act realises the legislators' intention to make information available at the lowest reasonable cost and as effectively as possible.

For the purpose of this review DEIT's website was accessed through a google search for the Department of Enterprise, Investment and Trade. In summary the DEIT website:

- Provides a 'home' or 'landing' page for DEIT.
- Contains a heading on the landing page titled 'About this website' with a subheading of 'Access to Information', a title traditionally utilised on Departmental/Agency websites to fulfil GIPA Act obligations. By clicking this subheading, the website then automatically links to the DCS website. This redirection to the DCS website appears to also occur under other subheadings located on the DEIT website absent any qualification or advice that the searcher is leaving the DEIT website and is being redirected to the website of another agency. Once redirected to the DCS website a heading appears titled 'How can I access Department of Customer Service Information' absent any reference to accessing information held by the DEIT.

Further the DEIT homepage website responds to a google search for access to information by displaying the subheadings listed above including the subheading 'access to information' or alternatively provides a different subheading *GIPA Act - Request access to information* which again redirects the searcher to the DCS website.

³ <https://www.igi-global.com/dictionary/cyber-capability-framework/8702>

⁴ GIPA Act section 20

⁵ GIPA Act section 6(2)

⁶ GIPA Act section 3

In circumstances where the individual clicks on one of the DCS sites they are directed to submit a request for information to the relevant department which then lists NSW Government agencies. This list of agencies is incomplete for example the IPC, a separate NSW agency is not listed.

Under the GIPA Act agencies must provide assistance to applicants seeking to exercise their right to access government information.⁷

In order to access information from DEIT it is necessary to navigate through the 'Policies' subheading on the DEIT website. It is arguable that members of the public would not consider their legislated right to access information from DEIT can be effected through a link entitled 'Policies'.

The DEIT website design is not a feature apparent in the home pages for websites maintained by other clusters in particular NSW Health, NSW Education, NSW Transport, Department of Premier and Cabinet and the State Records and Archives Authority as a newly established separate agency.

As a newly established agency DEIT may have obtained services under contract or from another agency to develop its website. However, the current design is unsympathetic to DEIT's compliance more broadly and necessitated the introduction of timeframes for compliance with recommendations made by the IPC in this report.

This report makes no findings in relation to the factors responsible for the introduction of this complexity that is manifest on two different approaches to an attempt to exercise the right to access information. Both of these approaches have the practical impact of directing individuals to a different government agency absent any form of disclaimer or advice. In addition to the mandated obligation to provide assistance these shortcomings appear insensitive to the NSW Government policy commitment to customer service.

Whilst the redirections apparent in the website design and its content including the supply of confusing if not incomplete information, is detrimental to the Agency's ability to meet its GIPA Act obligations this audit has not revealed any failure to meet the obligations of the GIPA Act by any person or the Agency. The Agency remains able to exercise its GIPA Act obligations properly in accordance with any provision of the GIPA Act.⁸

For this reason, I make no adverse finding in respect of the Agency or any person.⁹

In addition to the findings and recommendations contained throughout this report the Agency should take immediate action to implement measures to address the website's functionality in redirecting to the DCS website and update its contents. In doing so it is recommended that the Agency, provide a clearer and less convoluted pathway to enable the exercise of right to access information held by DEIT.

3. Overview

The term 'machinery of government' refers to the manner in which the responsibilities of government departments and agencies are organised. A MoG change can be made for a number of reasons but in essence will arise as a result of the NSW Premier reorganising the functions and responsibilities of the government departments and agencies. In this case, the effect of the MoG was to establish the DEIT.

In order to give legislative effect to the MoG change, an Administrative Arrangements Order is required to be prepared by the Department of Premier and Cabinet (DPC).

⁷ GIPA Act section 16

⁸ GIIC Act section 24(1)

⁹ GIIC Act section 23(4)

The responsibility for implementing the machinery of government changes falls to the head of the Agency subject to the MoG.

The impact of these MoG changes can crystallise in various challenges for organisations, such as implementing new processes and procedures to ensure compliance with legislation that impacts the agency. The IPC acknowledges that giving effect to MoG changes can take time to fully implement and embed.

This desktop audit recognises that MoG changes are a natural part of the manner in which government operates, and these changes will always occur as the political landscape changes. Under the GIPA Act, the IPC has a role to play in providing information, advice, and assistance on matters relevant to the GIPA Act, and in connection with the exercise of functions under the GIPA Act¹⁰. Accordingly, the IPC has proactively engaged to support DEIT whilst it navigates its way through these challenges by providing guidance on what robust compliance with the GIPA Act looks like.

4. Background

DEIT is one of 10 NSW government clusters. It was established on 1 April 2022 following MoG changes announced on 21 December 2021¹¹. It brings together various agencies to support economic transformation. That mandate, and the composition of the cluster, presents a heightened risk to public integrity, particularly financial management requiring a sound foundation to achieve the requisite transparency and accountability¹². DEIT's portfolio includes the following executive agencies:

- Institute of Sport
- Investment NSW
- Office of Sport
- Venues NSW
- Destination NSW
- Western Parkland City Authority
- Create NSW
- Art Gallery of NSW Trust
- Australian Museum Trust
- Library Council of NSW
- Museum of Applied Arts and Sciences
- Sydney Opera House Trust
- State Archives and Records Authority of New South Wales

The results of this desktop audit, together with the agency self-assessment, have demonstrated that some systems, policies and practices of the agency remain under development. This is not inconsistent with the development of practices and procedures generally in a newly created agency.

¹⁰ GIPA Act Section 17

¹¹ <https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-790>

¹² GIPA Act Section 12(2)

Whilst DEIT has demonstrated compliance, maturity is in some areas more advanced than others and they are encouraged to continue working on robust practices for areas under development.

Despite the challenges I am satisfied that the Agency has demonstrated its commitment to compliance by acknowledging, through its self-assessment audit, those areas where policies or procedures are absent or in development.

This report provides guidance to assist in compliance and in circumstances where the DEIT confirms its acceptance and adoption of these recommendations there is no factor that would motivate an escalation of regulatory action by the IPC.

This report outlines the findings and proposed recommendations as a result of the IPC's review.

5. Methodology

5.1 Sample selection

In undertaking this review the IPC requested that DEIT undertake a self-assessment of its compliance with the GIPA Act using the IPC's Self-Assessment Tool. The IPC reviewed DEIT's compliance with the GIPA Act as described in its self-assessment against a sample of information that was publicly available on its website on the date of the assessment.

For the purpose of the methodology adopted during this review, it is noted that for some criteria the IPC was not able to measure each category within the self-assessment tool against publicly available information as the criteria did not lend themselves to such a measure. This is because such criteria related to policies or a procedure to support a function and such policy or procedure was not publicly available and nor was it required to be. Where this is the case, the IPC has observed that the criterion was "Not measurable" and informed its assessment based on the responses provided by DEIT.

5.2 Assessment criteria

The IPC assessed DEIT's compliance with the GIPA Act against the criteria identified in the self-assessment tool. The criteria are set out in the table below.

Assessment criteria
1. Culture and Leadership
2. Governance
3. Legislative Compliance and Achievement <ul style="list-style-type: none">I. Open accessII. Contract registerIII. Authorised proactive releaseIV. Informal releaseV. Formal access applicationsVI. Disclosure logs
4. Supporting tools and systems
5. GIPA functions

5.3 Conduct of the analysis

The analysis of DEIT's compliance was conducted by the IPC during July 2022. DEIT provided the IPC with a copy of its completed self-assessment. IPC staff examined DEIT's responses in the self-assessment tool in conjunction with the publicly available information on DEIT's website.

The assessment of DEIT was performed with reference to the self-assessment tool, with data and observations recorded. The IPC recorded and retained data in undertaking the audit. For the purposes of this report, it was deemed not necessary to provide a breakdown as the findings and recommendations are applicable generally and not specifically.

6. Acknowledgments

The IPC appreciates the assistance and co-operation provided by DEIT and its officers during the review and assessment. The IPC remains available to assist DEIT as it continues its work in fulfilling its responsibilities under the GIPA Act and maturing its compliance.

7. Observations

7.1 GIPA Culture and Leadership

Criterion		Result
I.	Agencies with an open access/data culture	
a	Support and advocate an open access/data culture as a priority from the Board and the executive to all levels of the organisation	Not measurable
b	Have established governance around access to open information and data	Not measurable
c	Reflect and monitor and regularly update what is open access and open data and how it may be made available to citizens	Not measurable
d	Provide training and support to ensure staff are aware of open access and open data policies and requirements	Not measurable
e	Promote the four pathways for access to information	Not measurable
f	Promote a pro-disclosure culture	Not measurable
g	Support informed and independent decision-making by Right to Information officers	Not measurable

Comments, findings and recommendations
<p>Comment: Under the GIPA Act, leaders have an important role in promoting awareness and fostering an organisational culture that advances and promotes the objects of the GIPA Act. This can be achieved by adoption of an open access and open data culture by promoting releasing information supported by a governance framework that demonstrates a commitment to open access and data.</p>

Comments, findings and recommendations
<p>Observation</p> <p>In undertaking its assessment of the DEIT against this criteria, the IPC's review was limited to an assessment of the agency's self-assessment response in conjunction with the information publicly available on its website.</p> <p>DEIT identified its compliance to be at 86%, indicating most categories had processes/procedures in place. However, there were two categories in which DEIT self-identified that processes and procedures were under development, and this was in relation to reviewing, monitoring and regularly updating open access and open data obligations as well as providing training to staff.</p> <p>As DEIT had limited opportunity to consider these matters, they may wish to refer to the available suite of e-learning modules that the IPC has developed, which includes:</p> <ol style="list-style-type: none"> 1. Access Training for Decision Makers under the GIPA Act 2. Towards Open Government Information in NSW 3. Open Data 4. The Contract Register and Contract Disclosures <p>In particular the IPC's module on 'Toward Open Government Information in NSW and Open Data' may assist DEIT to elevate the understanding, culture and awareness of open access/open data across DEIT.</p> <p>DEIT may also wish to consider undertaking a further review against this assessment within twelve months of being operational to assess and determine progress against the implementation and development of its policies and procedures. The implementation and development of processes and policies may be supported by a remediation plan that identifies the timeframes in which full implementation will occur by.</p> <p>Recommendation 1: It is recommended that DEIT undertakes a further self-assessment of its compliance under the GIPA Act, within 12 months of being established and review its progress.</p> <p>Recommendation 2: It is recommended that DEIT develops a remediation plan for the implementation and finalisation of all policies and procedures it has identified as being in development with timeframes for full implementation.</p>

7.2 Governance

Criterion	Result
I. Have in place procedures to comply with Schedule 2	Not measurable

Comments, findings and recommendations
<p>Comment: Schedule 2 of the GIPA Regulation provides for statistical information about the formal access application that an agency has received to be captured and included in the annual report. This statistical information informs the preparation of the Information Commissioner's annual report on the operation of the GIPA Act in accordance with section 37 of the <i>Government Information (Information Commissioner) Act 2009</i> (GIIC Act).</p>

Comments, findings and recommendations
<p>Section 37 of the GIIC Act requires that the Information Commissioner, as soon as practicable after 30 June in each year, prepare and publish a report on the operation of the GIPA Act (generally, across all agencies) for the preceding 12 months. The Information Commissioner is further required to furnish that report to the Presiding Officer at each House of Parliament and a copy of the report to be provided to the Minister responsible for the IPC.</p> <p>Observation</p> <p>DEIT's self-assessment specifies a result of 100% compliant. The IPC's review was limited to the response from DEIT as there was no publicly available information and an annual report had not yet been required of DEIT.</p> <p>DEIT's response notes that statistical information to be reported is captured within their GIPA register.</p> <p>I note this GIPA register is not publicly available but as a part of their audit response DEIT provided a copy to demonstrate the statistical information will be collected when processing GIPA applications. The GIPA register provided indicates that DEIT has a procedure in place that may support them in meeting the requirements under Schedule 2 of the GIPA Regulation.</p> <p>In this regard, the IPC has also established the GIPA Tool which assists all agencies and organisations regulated by the GIPA Act to comply with the legislation when processing and reporting on government information access applications. In the review and any further development of its procedures for complying with Schedule 2, DEIT may wish to consider incorporating the GIPA Tool into its procedure.</p> <p>Recommendation 3: It is recommended that DEIT consider adopting the GIPA Tool as a means of assisting it to meet the requirements of reporting on its annual GIPA activities under section 125 of the GIPA Act.</p>

7.3 Legislative compliance and achievement

Criterion	Result
I. Open access information	
a Makes its open access information publicly available, unless there is an overriding public interest against disclosure	Partially Compliant
b Makes Open Access Information available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency)	Partially Compliant
c Ensures there is at least one way that people can access this information free of charge	Compliant
d Keeps a record of the open access information that an agency does not make publicly available on the basis of an overriding public interest against disclosure	Partially Compliant
e Has an Agency Information Guide that meets the requirements specified in section 20 of the GIPA Act and the IPC's AIG guideline	Partially Compliant

Criterion		Result
f	Reviews and updates the AIG every 12 months	Not measurable
g	Notifies the Information Commissioner before amendment to, or release of, an AIG (section 22)	Compliant

Comments, findings and recommendations
<p>Comment: The GIPA Act requires a range of open access information to be made publicly available unless there is an overriding public interest against disclosure of the information. Open access information is to be publicly available free of charge on an agency's website (unless to do so would impose unreasonable additional costs on the agency or there exists an overriding public interest consideration against disclosure of the information (OPIAD)¹³).</p> <p>The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information and helps to foster responsible and representative government that is open, accountable, fair, and effective.</p> <p>The type of information that is open access is defined in section 18 of the GIPA Act and includes: the agency's information guide; policy documents; disclosure log of access applications; register of government contracts; and record of open access information not made publicly available. The open access requirements vary according to the type of agency (see Parts 2, 3 and Schedule 1 GIPA Regulation).</p> <p>Observation</p> <p>Earlier in this report, observations have been made relevant to DEIT's website and the ease with which information can be located and accessed from its website.</p> <p>This is a relevant consideration when making information available as open access under clause 6 of the GIPA Act which relies on websites as a key vehicle for making information available¹⁴. Those observations include a recommendation for DEIT to address the identified complexity associated with its website which is also relevant for the purposes of fulfilling obligations in relation to open access information. This review observed that DEIT has a website in which it has made some open access information available free of charge. That information was located by having to navigate the "Policies" subheading on DEIT's website. Once located, that open access information includes its Agency Information Guide (AIG) and certain policy documents, such as Gifts, Benefits and Hospitality Policy. DEIT's website also notes the disclosure log and register of government contracts are considered to be open access information and compliance with these are addressed in later sections of this report.</p> <p>DEIT self-reported a level of compliance of 86%, assessing themselves as compliant in most areas except for two, where they assessed themselves as 'in progress'. These two areas include making open access information available unless there is an OPIAD and adopting an AIG compliant with section 20 of the GIPA Act.</p>

¹³ Section 6 *Government Information (Public Access) Act 2009*

¹⁴ GIPA Act Section 6(2)

Comments, findings and recommendations
<p>In this regard, DEIT reports they are currently still in the process of publishing its open access information on its website, noting that new policies and documents are in the process of being drafted and finalised. With respect to the AIG, DEIT notes they are in the process of including amendments suggested by the Information Commissioner prior to formally adopting it. The IPC acknowledges that DEIT did provide its AIG to the Information Commissioner in accordance with section 22 of the GIPA Act.</p> <p>The IPC acknowledges the timing of the MoG changes coming into effect concurrent with the time of the IPC Audit. DEIT has taken positive steps to meet its open access obligations under section 18 of the GIPA Act by actively publishing the open access information currently available to them. It is also encouraging to see DEIT implementing actions to meet their open access obligations. The IPC encourages DEIT to continue to publish open access information once their review of the documents and/or policies have been finalised.</p> <p>The IPC notes that DEIT assessed itself as compliant in respect of the record of open access that the agency does not make publicly available on the basis of an OPIAD. In this respect, DEIT outlined there is no open access information which has not been published due to a public interest being against disclosure. Nonetheless, the IPC reminds DEIT that a record of the information that the agency does not make publicly available is an important mechanism to assist members of the public in understanding the full scope of the agency's information holdings and the information which has not been made available publicly on account of an OPIAD. In finalising their open access information on its website, the Agency is encouraged to continually review its record of open access information that is not made publicly available. Therefore, when finalising open access documents and policies, DEIT should take steps to update its website to include the required information in satisfaction of section 6(5) of the GIPA Act.</p> <p>Recommendation 4: It is recommended that DEIT finalise and adopt its AIG within 4 months of the date of this report.</p> <p>Recommendation 5: It is recommended that DEIT take steps to amend its website to include details of the information that it does not make publicly available, if any, under section 6(5) of the GIPA Act within 4 months from the date of this report.</p>

Criterion		Result
II.	Contract register	
a	Maintain a register of all class 1 contracts with a value of \$150,000 (including GST) or more that identifies the name and business address of the contractor, the commencement date and duration of the contract, details of the project, project cost, basis for variations and selection process	Not Compliant
b	Update the register within 45 working days of the contract coming into effect	Not measurable
c	Ensure that the contract register includes all additional information required for class 2 contracts (see section 30)	Not measurable
d	Ensure that the register fully meets the requirements for Class 3 contracts (those with a value of \$5 million or more) (see section 31)	Not measurable

Criterion		Result
e	<p>Ensure that if a copy of a contract is not included on the agency register or only some of the provisions are included because it contains confidential information (see section 32), agencies place on the register:</p> <ul style="list-style-type: none"> ▪ the reasons why the contract or provisions have not been included on the register ▪ a statement as to whether it is intended to include the contract or provisions at a later date, and when this is likely to occur ▪ a general description of the types of provisions that have not been included. 	Not measurable
f	<p>Ensure that processes are in place to update the register in the case of material variations to the contract. Material variations should be included in the register within 45 working days after the variation becomes effective.</p>	Not measurable

Comments, findings and recommendations
<p>Comment: The GIPA Act requires that all public sector agencies that enter into a contract with the private sector, to have established a register of all government contracts that have a value, or are likely to have a value, of \$150,000 inclusive of GST or more. These requirements upon agencies are set out in sections 27 – 40 of the GIPA Act and includes exemptions where that may be relevant.</p> <p>Observation</p> <p>In their self-assessment DEIT noted that there is register which captures all information required under the GIPA Act. However, on review of DEIT’s website it is unclear where the register is located and if it contains any government contracts. In this regard, the IPC’s desktop review observed that DEIT has a link on its Access to Information webpage for a register of government contracts.</p> <p>That link provides a page which refers to “Resilience NSW Register of government contracts” which states that all contracts are published on the NSW Government eTendering website. A review of the NSW Government eTendering website failed to identify any government contracts for DEIT. This may be attributable to the timing of when contracts were entered into and commencement of DEIT as an Agency. Additionally for the purposes of this review, the IPC did observe that the DEIT website also contains another link to the register of government contracts on their “How can I access Department of Enterprise, Investment and Trade information?”. However, this link provides an error message of “The requested page could not be found.” Given the nature of DEIT’s responsibilities this issue requires immediate reconsideration by DEIT.</p> <p>This obligation is mandatory and significant. The IPC reminds the Agency that a register of government contracts is considered to be open access information and should be made readily available for free on their website. In ensuring compliance with contract register requirements, the IPC encourages DEIT to make it easily accessible and to conduct regular reviews to ensure currency.</p>

Comments, findings and recommendations
<p>DEIT assessed itself as compliant with a majority of the categories except updating the register within 45 days and ensuring there is a process to update the register for material variations. As there was no publicly available information for items b to f, the IPC was not able assess DEIT's compliance in this regard.</p> <p>Finally, the IPC notes that DEIT is currently in the process of updating its internal webpages to include a webform for staff to complete in respect of contracts entered into by DEIT. DEIT may benefit from accessing the IPC's contract register self-assessment checklist in the progress of this work.</p> <p>Recommendation 6: It is recommended that DEIT immediately review and update their webpages to provide details of the current contract register and ensure that all contracts captured by the GIPA Act and entered into by DEIT are recorded within 4 months of the date of this report.¹⁵</p> <p>Recommendation 7: In undertaking its continued work to fulfil the requirements for contract register reporting, it is recommended that DEIT have regard to the IPC's contract register assessment checklist. Additionally, DEIT may wish to consider the completion of the IPC training on contracts register which is available as an e-learning module.</p>

Criterion	Result
III. Authorised proactive release	
a Make government information held by the agency publicly available unless there is an overriding public interest against disclosure	Compliant
b Make the information available either free of charge or at the lowest reasonable cost	Compliant
c Review its program for release of government information at intervals of no more than 12 months to identify the information that it holds that should be made publicly available	Not measurable
d Have in place clear governance arrangements to manage proactive release of information	Not measurable
e Incorporate proactive release into records management processes, including processes at creation of the document or information to determine if it should be proactively released	Not measurable
f Have processes in place to determine release priorities, such as stakeholder consultation and analysis of requests	Not measurable

¹⁵ GIPA Act Part 3 Division 5

Comments, findings and recommendations
<p>Comment: A key intention of the GIPA Act is to encourage proactive public release of government information by NSW public sector agencies. This is one of the primary ways to meet the GIPA Act's broader goal of advancing democratic government that is open, accountable, fair and effective. The GIPA Act authorises agencies to have proactive release programs in place and requires these to be reviewed each year, with outcomes reported to the IPC. The GIPA Act authorises agencies to release information through proactive release programs which must be reviewed each year, and outcomes reported to the IPC.</p> <p>Observation</p> <p>This desktop review identified that DEIT aims to make information available through proactive release. However, on review of the DEIT website there was limited information released proactively. The IPC notes this is not uncommon for a newly established agency operational from 1 April 2022. Nonetheless, the DEIT website outlines that if the information cannot be located, the GIPA team at DEIT can be contacted to determine whether information has already been proactively released. Furthermore, the DEIT website advises that a fee may be required for some information but in these circumstances the applicant would be advised. This indicates DEIT's willingness to make the information available for free or charge a fee only when necessary.</p> <p>It is not possible to ascertain from a review of its website whether DEIT meets c) - f) of the requirements for proactive release. However, it is noted that the Agency assessed itself in progress for c) to d), and processes/procedures are under development for e) and f). The IPC notes that DEIT self-identified that it has 'in progress' work to further fulfil its compliance requirements.</p> <p>The Agency's attention is drawn to the resources published by the IPC and available on its website that can support DEIT in this endeavour.</p> <p>This includes the IPC fact sheet: Authorised proactive release of government information.</p> <p>Recommendation 8: It is recommended that DEIT finalises the remaining work it has identified in its self-assessment to ensure compliance with section 7 of the GIPA Act within 4 months from the date of this report.</p>

Criterion	Result
IV. Informal Release	
a Have a process in place to manage informal requests for government information	Compliant
b Ensure staff understand, through a documented guideline or manual, what information can be released on the basis of an informal request, and what types of information require a formal application under Part 4 of the GIPA Act	Not measurable
c Have defined approval processes and delegations or authorisations for permitting the release of information informally	Not measurable
d Maintain a record of informal requests to inform the future program for proactive release (section 7)	Not measurable

Comments, findings and recommendations	
<p>Comment: Section 8 of the GIPA Act enables agencies to release information informally. The informal release of information provides benefits for agencies and citizens and increases access to information consistent with the object of the GIPA Act. Informal release of information can be more efficient, flexible and timely for agencies and citizens. The effectiveness of this pathway can be enhanced through sound agency practices, recognising the safeguards for staff who release information and by linking the pathway to agency access mechanisms, in particular, Agency Information Guides.</p> <p>Observation</p> <p>There is no information available on DEIT’s website which would confirm the level of compliance by the agency. However, the DEIT website outlines the type of information that it will typically release informally and how that information can be requested. The information describing informal access is consistent with the requirements of section 8 of the GIPA Act.</p> <p>Furthermore, as part of the desktop audit DEIT provided a copy of their GIPA register template and delegations. Whilst the GIPA register is not publicly available, it would appear to support DEIT having a process in place to keep track of informal requests which may be used for proactive release.</p> <p>In this regard, the IPC is of the view that there is a process in place to track informal requests and that this practice of retaining an informal requests register is a positive practice.</p> <p>In its self-assessment DEIT identified itself as complaint with all categories except procedures to ensure staff understand the approach and requirements relevant to informal release, which they stated is in development. The IPC recognises this work is underway. DEIT should aim to finalise the work underway as soon as possible which will better position the Agency in receiving and processing informal access applications.</p> <p>The IPC notes that DEIT has delegations in place for deciding informal access requests and a copy has been provided as part of this audit. DEIT is encouraged to consider proactively releasing this information publicly on its website.</p> <p>Recommendation 9: It is recommended that DEIT finalises the remaining work it has identified in its self-assessment to ensure compliance with section 8 of the GIPA Act within 4 months of the date of this report.</p>	

Criterion		Result
V.	Formal access applications	
a	Have staff who are authorised to manage formal access applications including the authority to make a reviewable decision (Right to Information officers)	Compliant
b	Have processes in place to determine if the request is valid, or if the information is available via any alternative means	Not measurable

Criterion		Result
c	Provide assistance and advice to the applicant to facilitate the making of a valid application (see section 16)	Not measurable
d	Provide an access application form available to download on your website, or accessible in some other way and have processes for payment of the application fee and any processing charges, which can include electronic facilities.	Compliant
e	Have systems and processes in place to undertake searches for information, such as identification of parameters of GIPA applications and established records storage and retrieval systems.	Not measurable
f	Have systems and processes in place to undertake consultations with third parties (see sections 54 and 54A)	Not measurable
g	Monitor the timely finalisation of requests (as the GIPA Act specifies timeframes for decisions)	Not measurable
h	Have processes in place to manage an internal review if the individual is not satisfied with the decision about release of the information	Not measurable
i	Provide decision templates and ensure processes are in place to inform decisions about waiver or reduction of fees or charges on the basis of hardship	Not measurable
j	Provide decision templates and ensure processes are in place to inform the making of the allowable decisions (section 58)	Not measurable

Comments, findings and recommendations
<p>Comment: The GIPA Act provides a legally enforceable right to access most government information unless there is an OPIAD that on balance displaces the right to access information. The GIPA Act also outlines the processes that applicants and agencies must follow in dealing with access applications and the options for the review of those decisions.</p> <p>Observation</p> <p>It was not possible through a desktop audit to confirm the level of compliance by DEIT against all the elements that would be necessary to ensure that the requirements of section 9 are being met. The threshold issues section of this report provides relevant background.</p> <p>However, this review did establish from DEIT's AIG, "Access to information from DEIT" webpage and copy of delegations that DEIT has authorised staff to make reviewable decisions.</p>

Comments, findings and recommendations
<p>In its self-assessment, DEIT identified that 4 criteria relevant to section 9 were in progress, with the rest being either compliant and/or procedures in place. There is no publicly available information about the policies and procedures that DEIT has in place to support its formal access functions. However, there is no information available to the IPC to indicate that DEIT's self-assessment is not accurate. The IPC recognises a number of areas are currently under development and encourages DEIT to avail itself of the resources and templates on the IPC website which have been developed to support agencies in the exercise of their functions in dealing with formal access applications.</p> <p>Recommendation 10: It is recommended that DEIT finalise the remaining work identified in the self-assessment to ensure compliance with the GIPA Act within 4 months of the date of this report.</p>

Criterion	Result
VI. Disclosure logs	
<p>a Keep an up-to-date agency disclosure log which contains the following information:</p> <ul style="list-style-type: none"> ▪ the date the application was decided ▪ a description of the information released ▪ a statement as to whether the information is now available to other members of the public and how it can be accessed 	Not measurable
b Make the disclosure log available free of charge on their agency website	Not measurable

Comments, findings and recommendations
<p>Comment: Section 25 of the GIPA Act requires that agencies keep a disclosure log as part of their mandatory open access information. The disclosure log publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public. Section 26 of the GIPA Act requires agencies to record the following information about each access application in the disclosure log: a) the date the application was decided; b) a description of the information to which access was provided in response to the application; and c) a statement as to whether the agency intends to make the information available to other members of the public and, if so, how it can be accessed.</p> <p>Observation</p> <p>In their self-assessment DEIT advises that no information related to a formal access request has been considered to be of public interest generally thus warranting publication.</p> <p>On review of DEIT's website, a link is available to its disclosure log which contains information consistent with the self- assessment provided. DEIT's disclosure log at the time of the audit could not be measured as there was no information available.</p>

Comments, findings and recommendations
<p>Recommendation 11: It is recommended that DEIT review and update their disclosure log on their website to ensure compliance with section 25 and 26 of the GIPA Act as it determines formal access applications into the future within 4 months of the date of this report.</p>

7.4 Supporting tools and systems

Criterion	Result
a Provide training on a regular basis for officers authorised to exercise for GIPA functions	Not measured
b Provide regular communication providing updates on policies or guidance on GIPA responsibilities	Not measured
c Have in place a case management tool for managing GIPA applications	Not measured
d Provide documented procedures for meeting GIPA requirements which are updated as required and communicated to staff	Not measured
e Have in place procedures to assist in managing the risks associated with searches for information including: <ul style="list-style-type: none"> ▪ guidance on conducting searches, and ▪ templates for issuing search requests and for return of documentation and certification 	Not measured

Comments, findings and recommendations
<p>Comment: The GIPA Act does not stipulate the particular training or tools that agencies should have in place to fulfil the legislative requirements of the GIPA Act. However, it is apparent that for those legislative requirements to be met, staff need to be supported to comply with the GIPA Act through the availability of appropriate training, documented processes and delegations, and processes to ensure requests are handled in a timely and appropriate way.</p> <p>Observations</p> <p>The IPC accepted the outcomes from DEIT's self-assessment which outlined there were processes in place for some items and identified that work was also required to achieve effective compliance for others.</p> <p>DEIT's self-assessment identified that training would be provided to staff on exercise of GIPA functions every 12 months or more, that procedures were in development for meeting GIPA requirements and communicating regular updates to staff. DEIT's self-assessment notes that new staff will receive training and they will work towards processes and procedures in respect to GIPA.</p>

Comments, findings and recommendations
<p>Inadequate training and/or procedures can leave agencies vulnerable to non-compliance. Investing in the capabilities of staff who are involved in dealing with information access requests will lead to better decision-making, analysis, and build capacity within the agency. Therefore, agencies need to ensure systems are in place to monitor staff training which includes new and existing staff.</p> <p>In this regard, the IPC has also developed a suite of free eLearning modules, including for decision makers, that DEIT may wish to consider encouraging staff to complete. If DEIT wishes to support further staff training, they may wish to consider the GIPA training delivered by the Crown Solicitors Office (CSO).</p> <p>DEIT self-identified a number of areas of self-improvement which the IPC recognises are being developed. Nonetheless, DEIT should aim to finalise the work underway as soon as possible to better position the agency in managing their GIPA responsibilities. The IPC encourages DEIT to avail itself of the resources on its website which may be of assistance as they finalise processes and procedures currently under development.</p> <p>Recommendation 12: It is recommended that DEIT consider accessing and making available to staff the IPC’s eLearning modules as a mechanism to support staff in exercising GIPA functions.</p> <p>Recommendation 13: It is recommended that DEIT finalise the remaining work identified in the self-assessment to ensure they have implemented tools and systems that support them efficiently and effectively managing their GIPA responsibilities.</p>

7.5 GIPA Functions

Criterion	Result
a Appropriate delegations/ authorisations	Compliant
b Processes to ensure that delegations/authorisations are regularly reviewed	Not measured
c Delegations/ authorisations are regularly reviewed	Not measured

Comments, findings and recommendations
<p>Comment: The exercise of functions under the GIPA Act needs to be supported by clear and established delegations/authorisations, accompanied by processes to ensure that any delegations remain current and valid. The roles and responsibilities of staff with GIPA Act functions are clearly defined and communicated.</p> <p>Section 9 of the GIPA Act provides that the making of a reviewable decision in connection with an access application may only be exercised by or with the authority (given either generally or in a particular case) of the principal officer of the agency.</p>

Comments, findings and recommendations
<p>Observation</p> <p>This desktop audit did not identify a publicly available copy of DEIT’s delegations for the exercise of GIPA functions. However, DEIT provided a copy of the delegations with its self-assessment and advised that policies are required to be publicly reviewed. As a new agency the IPC would not expect to see evidence of regular review of delegations/authorisations in the circumstances of an Agency which became effective on 1 April 2022. However, going forward the regular review and currency of delegations/authorisations are important to ensure that staff are appropriately authorised to exercise functions under the GIPA Act. In this regard the Agency should develop a mechanism for regular review as part of its compliance measures.</p> <p>Recommendation 14: It is recommended that DEIT consider publishing its delegations for the exercise of GIPA Act functions as part of its proactive release of information.</p>

8. Conclusions and recommendations

8.1 Conclusions

This audit was informed by:

- A self-assessment completed by DEIT
- A desktop audit of DEIT’s publicly available material published to its website
- the legislative requirements of the GIPA Act.

In summary, this audit identified:

- an immediate need for changes to the DEIT website in respect of access to information rights
- a high level of commitment and engagement with the GIPA Act
- opportunities to support and enable DEIT to achieve compliance in respect of its GIPA Act functions.

8.2 Recommendations

Based on the threshold issue findings: the Agency should take immediate action to implement measures to address the website’s functionality in redirecting to the DCS website and update its contents. In doing so it is recommended that the Agency, provide a clearer and less convoluted pathway to enable the exercise of right to access information held by DEIT.

Based on the findings of this audit, it is recommended that DEIT implement the following within the timeframes specified:

Recommendations	
Recommendation 1	It is recommended that DEIT undertakes a further self-assessment of its compliance under the GIPA Act, within 12 months of being established and review its progress.
Recommendation 2	It is recommended that DEIT develops a remediation plan for the implementation and finalisation of all policies and procedures it has identified as being in development with timeframes for full implementation.

Recommendations	
Recommendation 3	It is recommended that DEIT consider adopting the GIPA Tool as a means of assisting it to meet the requirements of reporting on its annual GIPA activities under section 125 of the GIPA Act.
Recommendation 4	It is recommended that DEIT finalise and adopt its AIG within 4 months of the date of this report.
Recommendation 5	It is recommended that DEIT take steps to amend its website to include details of the information that it does not make publicly available, if any, under section 6(5) of the GIPA Act within 4 months from the date of this report.
Recommendation 6	It is recommended that DEIT immediately review and update their webpages to provide details of the current contract register and ensure that all contracts captured by the GIPA Act and entered into by DEIT are recorded within 4 months of the date of this report.
Recommendation 7	In undertaking its continued work to fulfil the requirements for contract register reporting, it is recommended that DEIT have regard to the IPC's contract register assessment checklist. Additionally, DEIT may wish to consider the completion of the IPC training on contracts register which is available as an e-learning module.
Recommendation 8	It is recommended that DEIT finalises the remaining work it has identified in its self-assessment to ensure compliance with section 7 of the GIPA Act within 4 months from the date of this report
Recommendation 9	It is recommended that DEIT finalises the remaining work it has identified in its self-assessment to ensure compliance with section 8 of the GIPA Act within 4 months of the date of this report.
Recommendation 10	It is recommended that DEIT finalise the remaining work identified in the self-assessment to ensure compliance with the GIPA Act within 4 months of the date of this report.
Recommendation 11	It is recommended that DEIT review and update their disclosure log on their website to ensure compliance with section 25 and 26 of the GIPA Act as it determines formal access applications into the future within 4 months of the date of this report.
Recommendation 12	It is recommended that DEIT consider accessing and making available to staff the IPC's eLearning modules as a mechanism to support staff in exercising GIPA functions.
Recommendation 13	It is recommended that DEIT finalise the remaining work identified in the self-assessment to ensure they have implemented tools and systems that support them efficiently and effectively managing their GIPA responsibilities.

Recommendations	
Recommendation 14	It is recommended that DEIT consider publishing its delegations for the exercise of GIPA Act functions as part of its proactive release of information.

9. DEIT's response to implementation of recommendations

Table 1 summarises the response by DEIT to the recommendations in this report. The explanation for the status is explained at Table 2 below.

Recommendation	Status			
	Adopted in full	Adopted in part	Alternate action adopted	Not adopted
1	X			
2	X			
3	X			
4	X			
5	X			
6	X			
7	X			
8	X			
9	X			
10	X			
11	X			
12	X			
13	X			
14	X			

Table 2: Description

Rating	Description
Adopted in full	The agency has accepted the recommendation in its entirety and will implement in full.
Adopted in part	The agency has accepted the recommendation in part. However, it has not fully realised the intent of the recommendation or only proposes to implement part of the recommendation.
Alternate action adopted	The agency has addressed the underlying issue by taking action different to the recommended action and that action is deemed acceptable to the IPC.
Not accepted	The agency has not accepted the recommendation.

10. Audit chronology

Date	Event
6 April 2022	Correspondence from IPC to DEIT of proposed audit and request for completion of self-assessment tool
23 June 2022	DEIT provides completed Information Access Self-Assessment
18 July 2022	IPC conduct of DEIT desktop assessment
17 August 2022	Provision of draft compliance report to DEIT
31 August 2022	DEIT response to draft compliance report and recommendations
2 September 2022	Provision of final compliance report to DEIT

11. Abbreviations

The following table lists the commonly used abbreviations within this report.

Acronyms or abbreviation	Explanation
AIG	Agency Information Guide
CSO	Crown Solicitor's Office
DEIT	Department of Enterprise, Investment and Trade
GIIC Act	<i>Government Information (Information Commissioner) Act 2009</i>
GIPA Act	<i>Government Information (Public Access) Act 2009</i>
IPC	Information and Privacy Commission NSW
MoG	Machinery of Government
OPIAD	Overriding public interest against disclosure

12. Legislation

The following legislation is relevant to the conduct of this audit.

Government Information (Public Access) Act 2009 – relevant sections:

- Section 17 – Role of the Information Commissioner
- Division 1 – Ways of accessing government information
- Division 2 – Part 3 – Agency information guides
- Division 4 – Part 3 – Disclosure logs
- Division 5 - Part 3 – Government contracts with private sector

Government Information (Information Commissioner) Act 2009 – relevant sections:

- Section 21 – Investigation of agency systems, policies and practices
- Section 24 – Report on compliance with an Information Act