

Information Commissioner's Update

Presentation to the Practitioners' Network Forum

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information and
privacy commission
new south wales

Information Awareness Month

- May marks Information Awareness Month 2023 (IAM)
- This year's IAM theme is *'The Next Wave: empowering information professionals for the future'*.
- This theme greatly reflects the focus of the IPC on digital and emerging technologies and the shift to digital government and e-governance.

Open Government Week

- Open Government Week (OGW) was held on 8-12 May.
- The week invites open government doers, leaders, and thinkers from around the world to come together and share ideas, discuss solutions, and commit to new levels of citizen participation in government.

Informal Release of Information under Section 8 of the GIPA Act

- For OGW and IAM 2023, the Information Commissioner released a new report containing findings from:
 - research into the informal release pathway, undertaken by UNSW
 - a compliance audit examining the informal release practices of agencies
- The research will assist agencies to understand informal release, identify its benefits, provide guidance and decrease the need for formal applications.
- Overwhelmingly, **83% of informal requests** recorded by agencies resulted in information being released and **58% of agencies** reported keeping statistics on informal release.
- However, **most agencies** lacked established procedures to manage informal release requests.
- The Information Commissioner will release guidance on informal release for Right to Know Week NSW 2023 in September.

Information Access Agency Self- assessment Tool

- As part of IAM 2023, next week the Information Commissioner will launch the updated **Information Access Agency Self-assessment Tool**.
- The Tool enables agencies to assess their systems and policies to ensure their compliance with their information access requirements under the GIPA Act.
- The Tool has been designed:
 - so agencies can perform an assessment of their information governance maturity
 - they can track their progress in improving their information access practices
 - to assist in the exercise of GIPA Act functions.
- The updated Tool will be available from the IPC website along with the demonstration video.

Significant regulatory matters

- The IPC finalised a comprehensive update to Information Access Guideline 2 on processing charges
- The Information Commissioner made a submission to the Cth Privacy Act Review
- The IPC has finalised the Report on the Operation of the GIPA Act (Section 37) and is awaiting tabling date
- The IPC performed an upgrade to the GIPA Tool Platform in April to enhance functionality and improve design for easier reporting by agencies
- Several compliance reports will be released within the next month

Timeliness of agency decision making

- Under Section 57 of the GIPA Act, agencies must decide an access application and give notice of decision within 20 working days (subject to any permitted or agreed extensions)
- IPC complaints data continues to indicate that timeliness of decision-making is an ongoing issue for agencies
- Resource and staff retention appear to be a factor on timeliness
- Lack of communication on progress of the application further compounds the reasons for complaint
- For some agencies it is an issue of balancing of application and quality of process/decision making

Information access NCAT matter

Atkinson v Department of Premier and Cabinet and the Premier of New South Wales [2023] NSWCATAD 45

The Tribunal:

- Affirmed the agency's decision to refuse access to ten documents in dispute that related to ICAC Amendment (Validation) Bill.
- Considered the proper construction of cl 2(1) and 2(2)(a) of Schedule 1 to the GIPA Act, and found the previous decision of *Robinson v Transport for NSW; Robinson v Roads and Maritime Services* [2017] NSWCATAD 353 persuasive; and
- Found that once a document meets the description of any of the paragraphs (a) to (f) of cl 2(1), all information in that document, that is the entire document, is subject to the conclusive presumption of an overriding public interest against disclosure.

Information access NCAT matter

Berryman v Murray River Council [2023] NSWCATAD 70

- Set aside the Council's decision and ordered that it provide view-only access to the Centium report pursuant to section 72(1)(a) of the GIPA Act.
- Applied the existing case law on copyright and confirms that fulfilling obligations under the GIPA Act is not a fair dealing exception to the Copyright Act.

Robertson v Deputy Secretary, Local Government, Planning and Policy [2023] NSWCATAP 88

- Whether there is a COPIAD because the information (including a report) is 'excluded information' of the Office of Local Government Sch. 2.
- The Appellant conceded that the complaint handling and investigation processes are excluded but argued that the reports and decision-making processes are not.
- Reflected IC submissions regarding Schedule 2: *It is important in our view to first determine the functions granted to the respondent before determining whether the information sought "relates to" a prescribed statutory complaints handling process.*

Speaking Engagements

The Information Commissioner presented at the following engagements last quarter:

- OVIC Webinar: Focusing on Proactive and Informal Release of Information – 15 February
- 3rd Annual Driving Risk-Based Regulation 2023 – 21 February
- Local Government Professionals Australia (LG) Governance Conference – 22 March
- Aust. Government Data Summit 2023 – 30 March
- UNESCO Webinar: ATI for Pacific Island States – 31 March
- Commonwealth Open Government Partnership Meeting – 16 April
- QUT Public Service Management Program – 16 May

Upcoming

- UNESCO: African Network of Information Commissioners – 7 June
- 14th Edition of the International Conference of Information Commissioners (ICIC) – 21 June

Information access publications

NEW

- Fact Sheet – Open access obligations on parent agencies under the GIPA Act

UPDATED

- Information Access Guideline 2 – Discounted Processing Charges
- Information Access Agency Self-assessment Tool – *(to be released on 23 May)*
- Fact Sheet – Open Access Information for Citizens

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