



information
and privacy
commission
new south wales

Agency reporting on expenditure of public funds by disclosing the acquisition, disposal and value of major assets as required by the GIPA Act

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Executive Summary

The *Government Information (Public Access) Act 2009* (GIPA Act) enshrines the public's right to know. Public assets held by government departments are mandated *open access* to ensure accountability, integrity and transparency by government in dealing with these significant public assets. The assets are under the stewardship of government departments and those departments are required, as stewards to account to the public regarding their treatment of these assets. Regrettably, this aspect of stewardship is not meeting the requirements under the GIPA Act.

For the purposes of this audit, the ten government departments listed in Schedule 1 to the *Government Sector Employment Act 2013* (GSE Act),¹ were audited for compliance with the requirement to make publicly available and current public assets. The findings of this audit confirm continuing low levels of compliance by departments with the requirement to publish each year, major asset acquisition and property disposal together with their financial value². In summary:

- 40% of departments disclosed assets and acquisitions publicly
- 20% of departments' additional *open access* requirements, assets and acquisitions, are easy to locate on the department's website
- 20% of additional *open access* requirements are fully accessible to all users on the department's website without condition
- 20% of departments' list of major assets (other than land holdings) is classified and highlights the major acquisitions during the previous financial year
- 10% of departments published information that includes the number and total value of properties disposed of in the previous financial year
- 20% of departments had published required information in the previous 12 months
- 10% of departments had a documented policy and procedure for the collection, completion and publication of these additional *open access* requirements
- 50% of departments demonstrated that there is a process for the review and updating of the additional *open access* requirements
- 10% of department policies define/refer to an asset management framework as required by TPP19-07 – [Asset Management Policy for the NSW Public Sector \(TPP19-07\)](#)
- No department policy makes clear the authorisation process for the approval and publication of assets and acquisitions.

These results continue to demonstrate that there is significant work to be done in this important area to address the continuing low levels of compliance. Across all measures the level of compliance was less than 50%, achieving above 20% on one measure only.

The IPC recognises the important role it has in assisting departments to achieve compliance which in turn provides benefits to citizens in providing access to the information that the legislators intended to be proactively disclosed. In this regard, the IPC intends to develop targeted and specific resources to assist agencies with their understanding and interpretation of the additional *open access* requirements, including what constitutes better practice.

Accordingly, the IPC will treat this widespread compliance failing with additional regulatory assistance.³ However, action to achieve compliance and elevate transparency, accountability and public trust is required by the departments subject to this audit. The absence of action by departments in response to this protracted and prevalent non-compliance necessitates a commitment to the future application of compliance resources.

¹ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-040#sch.1>

² Clause 6(2)(a) and (b) *Government Information (Public Access) Regulation 2018*

³ Section 17 (b) of the *Government Information (Public Access) Act 2009*

A further examination of compliance with *open access* requirements will occur in 2023/24. That examination will focus on the adoption of the recommendations provided in this report.

1. Purpose

In summary, the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2018* (GIPA Regulation) require all NSW agencies to make a range of *open access* information publicly available unless there is an overriding public interest against disclosure of the information. For government departments, the GIPA Regulation provides for additional *open access* requirements.⁴

The current public sector context is characterised by an increasingly commercial environment and interface with industry. In this context the mandatory proactive disclosure requirements serve a pro-integrity purpose that equips agencies to prevent and, where identified, combat corruption. These requirements serve the interests of both citizens and agencies. Government departments have a significant integrity role in their acquisition and disposal of major assets which support the delivery of government services to the community.

Mandatory public release of open access information requirements promote consistent and transparent information sharing practices across NSW agencies and ensures that members of the public have an immediate, free of charge right of access to important government information.

Consistent with the object of the GIPA Act, the mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair, and effective.

It does this by placing the onus on agencies to push information into the public domain and:

- promotes open discussion of public affairs, enhancing government accountability and contributing to informed debate on issues of public importance;
- informs the public about agency operations and their policies and practices for dealing with members of the public; and
- ensures effective oversight of public funds.

The Information Commissioner identified in the eleventh annual '*Report on the Operation of Government Information (Public Access) Act 2009 (GIPA Act): 2020/21*⁵ (the 2020/21 Report) that departmental compliance with the additional *open access* requirements, for major assets and disposals remained low. This followed earlier observations in the 2019/20 Report,⁶ which identified that compliance with the additional *open access* requirements was low, with departments either failing to publish the required *open access* information or providing it via alternative mechanisms. Collectively these results stimulated a need to further review the compliance by departments to assist them to fulfil their responsibilities.

Against this context of low levels of compliance over consecutive reports, the decision to undertake this audit was made as part of the Information and Privacy Commission NSW (IPC)'s forward work program. The Information Commissioner signalled her intention to undertake the audit in her published Audit Work Program.⁷

⁴ Clause 6(2) of the *Government Information (Public Access) Regulation 2018*

⁵ Report on the Operation of the *Government Information (Public Access) Act 2009* - 21 available at https://www.ipc.nsw.gov.au/sites/default/files/2022-03/Report_on_the_Operation_of_the_GIPA%20Act_2009_2020-2021-Web_Accessible_Compressed.PDF

⁶ Report on the Operation of the *Government Information (Public Access) Act 2009* -2020 available at: https://www.ipc.nsw.gov.au/sites/default/files/2021-07/Report_on_the_Operation_of_the_Government_Information_Public_Access_Act_2009_2019_2020_0.pdf

⁷ IPC Audit Work Program available at: <https://www.ipc.nsw.gov.au/information-access/gipa-compliance-reports/ipc-audit-work-program-202122#:~:text=Our%20audits%20include%20audits%20of,on%20privacy%20and%20access%20matters>

2. Overview

The passage of the GIPA Act confirmed a commitment to *open access* information with the Agreement in Principle speech noting:

*The bills establish a framework to actively promote the release of Government information and they offer the opportunity for a fresh start. The new legislation shifts the focus toward proactive disclosure. The legislation requires that certain "open access information" must be published.*⁸

Part 2 of the GIPA Act provides the general principles for *open access* Information. Section 18(g) of the GIPA Act notes that such other government information, as may be prescribed by the regulations, constitutes *open access* 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.⁹

Clauses 6(2)(a) and 6(2)(b) of the GIPA Regulations, notes that for the purpose of section 18(g) of the GIPA Act, the following government information is prescribed as *open access* information of a government department:

- a) a list of the department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year; and
- b) the total number and total value of properties disposed of by the department during the previous financial year.

For the purposes of this audit, the ten government departments are as listed in Schedule 1 to the *Government Sector Employment Act 2013* (GSE Act),¹⁰ including:

1. Department of Premier and Cabinet (DPC);
2. Department of Regional NSW (DRNSW);
3. Department of Enterprise, Investment and Trade (DEIT);
4. NSW Treasury;
5. Ministry of Health (MoH);
6. Department of Education (DoE);
7. Department of Communities and Justice (DCJ);
8. Department of Transport;
9. Department of Customer Service (DCS); and
10. Department of Planning and Environment (DPE).

The IPC relied on the provisions of the GSE Act to inform its identification of a *government department*. This approach provides a lawful, clear and consistent basis for our approach¹¹. It also acknowledges that during the course of this audit, the IPC received correspondence from one department that sought to clarify its structure and status for the purposes of the compliance requirements for the additional *open access*.¹²

⁸ <https://www.parliament.nsw.gov.au/bill/files/3117/LA%2052,%2053,%2054%2009.pdf>

⁹ Section 6 *Government Information (Public Access) Act 2009*

¹⁰ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-040#sch.1>

¹¹ Government Information (Public Access) Regulation 2018 cl.6(3)

¹² The IPC will engage separately with this agency regarding the IPC's jurisdiction relevant to the agency

3. Background

In 2021, the Information Commissioner wrote to each Department Secretary highlighting the pro-integrity purpose of these specific additional *open access* requirements and the low levels of compliance. The 2020/21 Report observed no discernible change in those levels of compliance. In particular, the Information Commissioner noted:

- 22% (two departments) only partially met the requirement in relation to major assets and acquisitions. This is consistent with 2019/20;
- 33% (three departments) only partially met the requirement in relation to both the total number and the total value of properties the department disposed of during the previous financial year, with this being a moderate increase on 11% in 2019/20; and
- 67% (five departments) had some information only on the value of properties disposed of, mainly in the department's annual report. This is consistent with 2019/20.

The term 'major assets' is a critical element that departments must consider and define to ensure it satisfies its obligations under section 6(2)(a) of the GIPA Regulations. Land holdings are excluded from the GIPA Regulations requirement.

The GIPA Act and GIPA Regulations do not provide a definition of the term *major*. However, Treasury's Policy and Guideline Paper, TPP 19-07 Asset Management Policy (TPP 19-07)¹³ requires NSW Government agencies to develop a fit-for-purpose Strategic Assets Management Plan, Asset Management Plan, and an Asset Register. Whilst *asset* includes land holdings and the GIPA Regulation does not it is otherwise an instructive aid to defining a major asset.

Therefore, while the term of *major asset* is not defined by the GIPA Act or GIPA Regulation, TPP 19-07 provides a sound reference for agencies to build from, including a definition of *asset*, that assists with the identification of departmental *major assets* and any acquisitions or disposals.

This audit examined and considered:

1. the level of compliance with the additional *open access* requirements;
2. whether the departments are making the information about major asset acquisitions and disposals publicly available, their value and the currency of the information provided¹⁴; and
3. the existence of systems, processes and frameworks in place to ensure compliance with additional *open access* requirements.

4. Findings from the desktop audit

4.1. Limitations

In conducting the desktop analysis, no assessment has been undertaken in relation to the accuracy of, or the monetary values, that have been published by each respective department. The IPC acknowledges that:

- it is not in a position to comment on the accounting methodology undertaken by each department in calculating either the assets, acquisitions or disposals;
- what amounts to a *major asset* will be contextual to the nature and function of each department, and the agencies and organisations that fall under their cluster;
- the desktop analysis reflects a point in time, and that updates have occurred after the analysis and therefore are not reflected in the findings or observations made in this report;

¹³ https://www.treasury.nsw.gov.au/sites/default/files/2019-11/TTIP19-07%20NSW%20Asset%20Management%20Policy%20-%20Master%20Approved_31%20October%202019.pdf

¹⁴ Clause 6(2) of the *Government Information (Public Access) Regulation 2018*

- the timing of this audit placed the DEIT in a unique position because of its newly established status as a department coming into existence effective 1 April 2022. Accordingly, it had yet to publish an annual report.

4.2. Conduct of the analysis

The analysis of each department's adherence to the *open access* requirements was undertaken in late August and early September 2022. IPC staff examined each department's response in the Self-Assessment tool, in conjunction with publicly available information on each department's respective website. An assessment of each department was performed with reference to the Self-Assessment Tool, data and observations recorded.

The IPC recorded and retained data in undertaking the audit; and for the purposes of this report, it was deemed unnecessary to provide a breakdown of each agency as the findings and recommendations are applicable generally to all departments and not specifically.

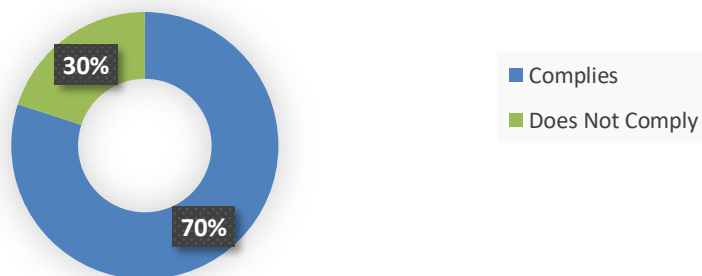
4.3. Existence

4.3.1. Does the department maintain a list of assets (other than land holdings) and disposals?

Untested self-reporting of practice, comments and recommendations

Table 1 – provides a summary of the self reporting responses across departments.

Table 1 - Is a list of assets and disposals maintained?



Findings:

- 70% (seven) of departments responded that they complied – advising that they maintain a list of assets and disposals
- 30% (three) of departments responded that they did not comply. This includes the case of the one department that was a newly created entity at the time of the audit.

Better practice observations:

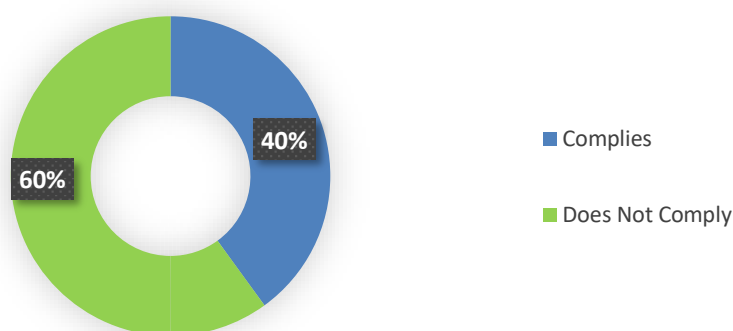
- TPP 19-07 facilitates the ability of NSW Government agencies in the identification and management of its non- financial assets. It requires an Asset Management Framework appropriate to the agency is established and maintained. That framework includes a fit-for-purpose Strategic Asset Management Plan, agency-level Asset Management Policy, Asset Management Plans and an Asset Register.

- An ability to satisfy the additional open access requirements of Clause 6(2) of the GIPA Regulation is dependent on the ability of an agency to identify its major assets. Where an agency has a list of assets its ability to make that information open access is better enabled.

Recommendation 1: It is recommended that, within 6 months of this report departments that do not maintain a list of major assets and disposals, as required by clause 6(2)(a) and clause 6(2)(b) of the GIPA Regulation, should as a matter of priority take steps to do so.

Table 2 – shows the breakdown of the level of compliance with the requirement to make the disclosure of assets and acquisitions in the previous financial year publicly available.

Table 2 -The disclosure of assets and disposals by departments are publicly available



Findings:

- 40% (four) departments complied - advising that they maintain a list of major assets and acquisitions which is publicly available. As part of the IPC's assessment, a review was undertaken of all the links provided by the departments to either their annual reports, where the relevant information was contained, or on the department's website which confirmed the self-reporting results of the departments.
- 60% (six) departments did not comply – advising that they did not maintain a list of major assets and acquisitions that was publicly available. As part of the IPC's assessment, a review of the departments that did not comply observed one department partially complied – it provided either the assets or acquisitions publicly but not both.

Better practice observations:

- TPP 19-07 sets out the core management practices that NSW Government expects agencies to adopt to support the management of non-financial assets. Implementing TPP19-07 provides departments with a credible repository of assets to then identify their major assets and acquisitions; and number and value of properties disposed of in the previous financial year. Departments need to demonstrate that disclosure of interests for both major assets and acquisitions is publicly available on the department's website in each reporting year.

Non-compliant practice observations:

- A website review of a department's landing page provided limited information on the number of assets.

Recommendation 2: It is recommended that, within 6 months of this report departments that do not make publicly available an *open access* list of assets and acquisitions, as required by clause 6(2)(a) of the GIPA Regulation, should as a matter of priority take steps to make this information publicly available.

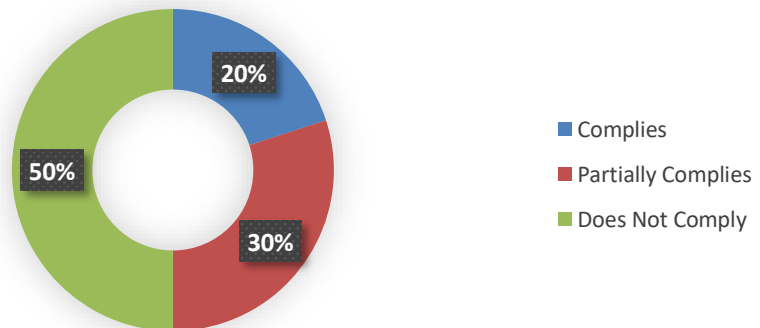
4.4. Accessibility

4.4.1. *Is the information easily accessible on the department's website?*

Findings, practice, comments and recommendations

Table 3 - provides the breakdown of the level of compliance across the departments.

Table 3 - Additional open access requirements are easily accessible on the Departments website



Findings:

- 20% (two) departments were compliant.
- 30% (three) departments partially complied.
- 50% (five) departments did not comply.

Better practice observations:

- Of the five departments that satisfied or partially satisfied this requirement, there was no single approach to how this information is presented and made accessible to citizens. The more effective solutions provided clear and easy to navigate webpages that provided summary information about major assets **acquisitions and disposals**. Having this information contained within the department's 'Access to Information' sections on the website which made it easier to locate.
- Departments may utilise their annual reports to detail the information about their list of **major assets, acquisitions, and disposals**. However, to facilitate ease of access to this information, departments should ensure that the link to the information is clearly signposted from their website.

Non/partial compliance practice observations:

- One department responded that it maintains a list of assets and acquisitions, but access was granted when requested by email. This approach is at odds with the purpose and intent of mandatory proactive release which is designed to provide citizens with an easy avenue to access information without necessitating a request for information.

- Some departments responded that the information was contained in their annual reports. However, they failed to provide specific page references or guidance to advise where this information was contained within the report. This introduced an accessibility barrier as the information could be scattered in a report that is hundreds of pages in length. One department provided information on its website about the assets it holds but did not provide further information about its major **acquisitions and disposals in the reporting year**.

Recommendation 3: It is recommended that where departments rely on their annual reports to detail the major **assets, acquisitions, and disposals** information that they should ensure linkages between their websites and annual reports, and depending on how the information is presented, provide citizens with guidance on interpreting this information.

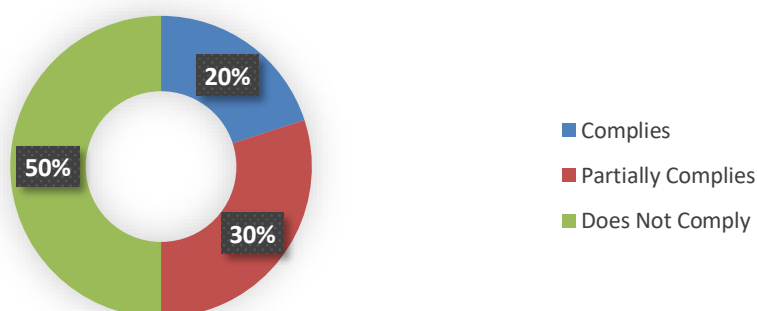
Recommendation 4: It is recommended that departments take steps to actively ensure the ease of locating *open access* information.

4.4.2. Is the information accessible without condition?

Findings, practice, comments and recommendations

Table 4 – provides the summary of the level compliance across the departments.

Table 4 - The disclosure of additional open access requirements is fully accessible to all users on the website without condition



Findings:

- 20% (two) departments were compliant.
- 30% (three) departments were partially compliant. These departments were found to have minimal barriers to access. However, no further guidance was provided on where this information could be located within the respective annual reports. When considered in the context of the size and volume of some annual reports, the absence of guidance to direct citizens to access this information creates a barrier to accessing this information.
- 50% (five) departments were non-compliant.

Better practice observations:

- Compliant departments maintained a dedicated page on their website that provided information about the additional *open access* obligations and did not contain barriers to access. For example, the relevant information was cross-referenced to the department's annual report.

- Compliant departments demonstrated a citizen-centric ease of access approach.

Non-compliant practice observations:

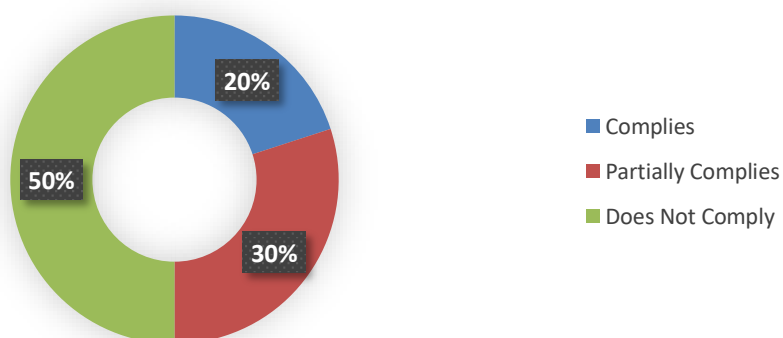
- Departments either did not maintain registers of the additional *open access* requirements, or where they did, they were not publicly available. Departments failed to adequately link the *open access* information between the annual report and the agency website.

4.5. Completeness

Findings, practice, comments and recommendations

Table 5 - provides a summary of the compliance against 'completeness' across the departments. Departments are required to publish a list of major assets, and included within this list of major assets, identification of the major assets acquired in the past financial year. To fully satisfy this criterion, departments need to be able to demonstrate that the list of published assets was classified and showed the major assets which had been acquired in the previous financial year.

Table 5 - A list of major assets (other than land holdings) highlights the major acquisitions during the previous financial year



Findings:

- 20% (two) departments complied.
- 30% (three) departments partially complied.
- 50% (five) departments did not have a list of major assets or acquisitions published.

Partial practice observations:

- Departments that partially complied either included the assets or the acquisitions in the previous financial year but not both. The departments predominately listed the major acquisitions and did not provide further details on what specific assets were acquired in the previous financial year.

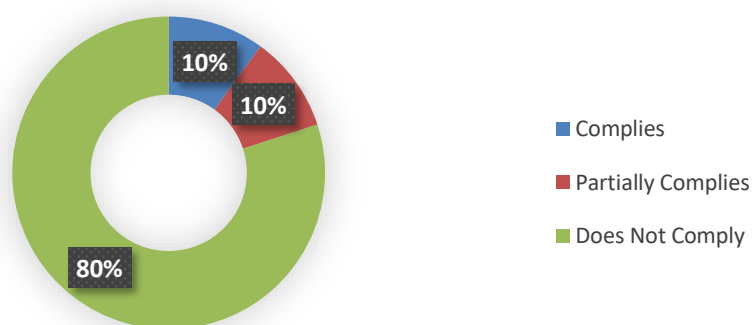
Recommendation 5: It is recommended that within 6 months of this report, departments take steps to ensure that both a list of major assets, and a list of major assets acquired in the previous financial year, as required by clause 6(2)(a) of the GIPA Regulation, is made publicly available.

4.5.1. Does the published information include the total number and total value of properties disposed of by the department in the previous financial year?

Findings, practice, comments and recommendations

Table 6 – *open access* requires departments to include the total number and monetary value of properties disposed of in the past financial year. This criterion requires departments to demonstrate that in making the information publicly available it also includes both the total number and total value of the properties disposed of in the past financial year.

Table 6 - The published information includes the total number and total value of properties disposed of in the previous financial year



Findings:

- 10% (one) department complied.
- 10% (one) department partially complied.
- 80% (eight) departments did not provide any details of the value and number of properties disposed of in the previous financial year.

Better practice observations:

- The department prepared a list that detailed the total number of properties and the value of the properties disposed of in the previous financial year. In this instance, the department provided both the value of the properties and the total value of the properties disposed of in the previous financial year.

Non-compliant observations:

- The department provided the total value of the properties disposed of in the previous financial year, but it did not provide a breakdown on the total number of properties disposed of in that period.

Recommendation 6: It is recommended that departments take steps to ensure the information includes the total number and total monetary value of properties disposed of in the previous financial year as required by clause 6(2)(b) of the GIPA Regulation.

4.6. Currency

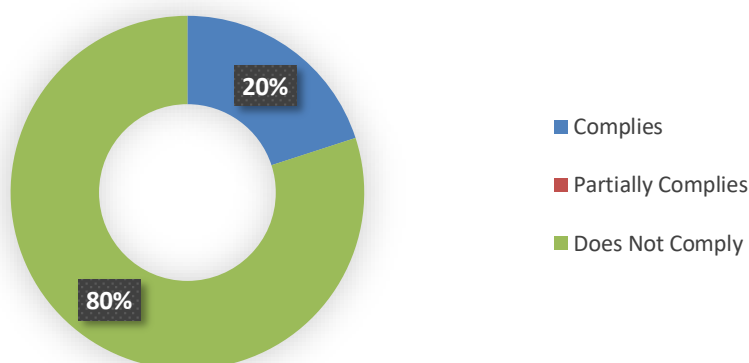
4.6.1. Has the publication of additional open access requirements occurred in the previous financial year (pre audit)?

Findings, practice, comments and recommendations

Table 7 - provides the summary of compliance with the currency of publication of the additional open access requirements. For the purposes of this audit, for a department to comply with the currency requirement, it must have published the additional open access requirements for the previous financial year (relevant to the IPC audit).

Departments publishing this information promptly and consistently assists with promoting transparency.

Table 7 - Publication has occurred in the previous financial year (pre-audit)



Findings:

- 20% (two) departments demonstrated that the information they published was within the previous financial year of the IPC Audit.
- 80% (eight) departments did not comply.

Non-compliant observations:

- Five departments had published information on their respective websites. Of these, it is noted that one department published the annual report outside of a 3-month window; with two departments showing information from financial years other than the 2021/2022 period. Two departments indicated that they were updating data at the time to ensure annual report requirements were being met.
- Three departments did not maintain any publicly available list of additional *open* access information. One of the departments had not yet published an annual report due to its newly established existence which came effective on 1 April 2022.

Recommendation 7: It is recommended that departments take steps to ensure that where the requirements of Clause 6(2) of the GIPA Regulation are to be satisfied through its annual report, the publication occurs promptly after 30 June each year to enable citizens to access the additional *open access* information in a timely manner, consistent with the object of the GIPA Act.

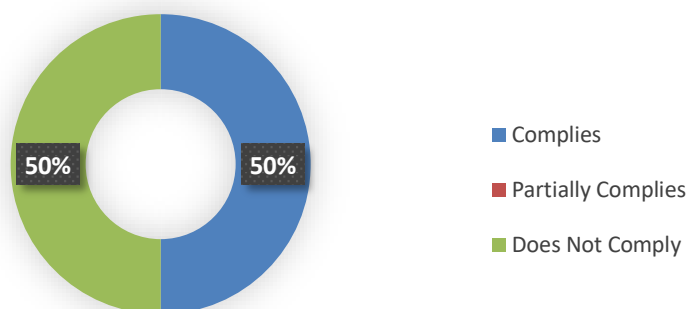
Recommendation 8: It is recommended that departments should develop internal processes to ensure the information is provided in a timely and consistent manner.

4.6.2. Does the publication of open access requirements demonstrate that there is a process for the reviewing and updating the additional open access information

Findings, practice, comments and recommendations

Table 8 - reviews whether the department demonstrated that there is a process for the review and updating the additional open access information on its website.

Table 8 - Department demonstrates that there is a process for the review and updating of the additional open access requirements



Findings:

- 50% (five) departments complied.
- 50% (five) departments did not comply.

Better practice observations:

- It is pleasing to note that five departments submitted that they were either currently reviewing or updating their processes in attempting to ensure compliance with the additional *open access* requirements. Additionally, searches on certain department websites demonstrated there had been evidence of updating and publishing of the additional *open access* requirements at the time of the audit.
- Although encouraging and welcome, it remains the case that this action is only now occurring after two consecutive years of observation that the compliance with the additional *open access* requirements was low. In the context of statutory requirements that have applied for many years immediate direct action to achieve the intention of the legislation and *shift(s) the focus toward proactive disclosure* is manifest.

Recommendation 9: It is recommended that departments take this as an opportunity to review and implement processes and procedures to ensure continual reviewing and updating of the department's additional *open access* requirements.

4.7. Policy and procedure

4.7.1. Does the department maintain documented policies and procedures regarding additional open access requirements?

Findings, practice, comments and recommendations

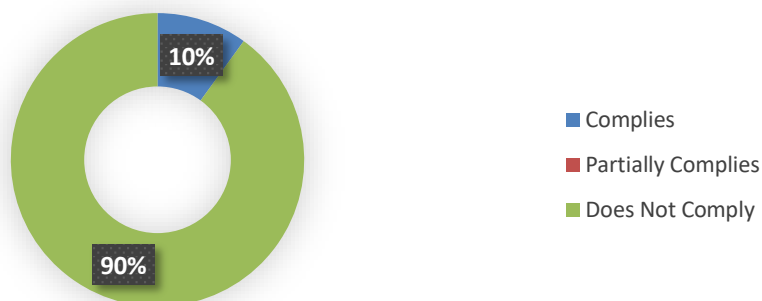
Table 9 – considered whether departments currently maintain internal procedures/policies to ensure compliance with additional open access requirements.

The exercise of functions under the GIPA Act recognises independent decision making on a case-by-case basis to enable legislated rights to be affected. This significant function requires training together with well documented policies and procedures. In considering compliance, the Information Commissioner has regard to the systems, policies and practices of agencies that relate to functions of agencies under an Information Act.¹⁵

The availability of policies and procedures would assist department staff to be aware of their obligations and provide a useful reference particularly in circumstances where there are organisational changes such as staffing movements. Further, the existence of policies/procedures would also ensure currency and consistency in the information collected and subsequently published.

In responding to the survey, departments were invited to advise on the existence and use of any policy or procedure to assist them in fulfilling their requirements.

Table 9 - Is there a documented policy and procedure for the compliance with additional open access requirements?



Findings:

- 10% (one) department indicated that it currently maintains an internal policy addressing additional *open access* requirements.
- 90% (nine) departments indicated that they do not currently maintain a documented policy/procedure; and a number indicated that while no such policy currently exists they are currently reviewing and developing policies to address this requirement.

¹⁵ Section 21 of the *Government Information (Information Commissioner) Act 2009*

Non-complaint observations:

- The audit was limited by the absence of the policies and procedures. It is the IPC's view that the absence of policies and procedures to guide staff in fulfilling their requirements is a demonstrable factor in explaining the low levels of compliance. The development of those policies should be supported with staff training on the application of those policies to provide a complete and holistic approach to the achievement of compliance.

Recommendation 10: It is recommended that within 6 months of this report, departments develop internal policies and procedures to ensure compliance with the additional open access obligations.

Recommendation 11: It is recommended that departments also provide internal training to staff with responsibilities for the management and publication of information that is the departments additional *open access* requirements under sub-clause 6(2) of the GIPA Regulation.

4.7.2. Does the department maintain policies that define/refer to an asset management framework as required by TPP19-07?

Findings, practice, comments and recommendations

Table 10 – provides the results on whether departments relied on or considered the asset management framework in developing their internal policies and processes, in accordance with TPP19-07.

Table 10 - Does the policy define/refer to an asset management framework as required by TPP19-07?

**Findings:**

- 10% (one) department indicated that their documented internal policies and procedures, to the extent that they were present relied upon TPP19-07.
- 90% (nine) departments did not adopt this practice.

Better practice observations

- One department that does currently maintain internal documented policy and procedure for the additional *open access* requirements advised that it does rely on TPP19-07 in attempting to ensure compliance with the additional *open access* requirements.

Recommendation 12: It is recommended that departments should review TPP 19-07 Asset Management Policy to inform and align their compliance for publication of their additional *open access* information.

4.7.3. Does the department maintain policies that detail the authorisation process for approval of publication of additional open access requirements?

Findings, practice, comments and recommendations

Table 11 – whether the departments' additional *open access* policy details the authorisation process for the approval and publication of assets and acquisitions.



Findings:

- 100% (10) departments were non-compliant with this criterion as evidenced by their response.

Non-complaint observations:

- The department responses are consistent with the response to other criteria regarding policies and procedures. It follows that in the absence of a documented policy or procedure no authorisation process for the approval and publication of assets and acquisitions would exist.

Recommendation 13: It is recommended that departments include details of the internal authorisation process adopted concerning the approval and publication of additional *open access* information when developing documented policies and procedures.

5. Conclusions and recommendations

5.1. Conclusions

This audit was informed by:

- A self-assessment completed by each department;
- A desktop audit of each department's publicly available material published to its websites; and
- The legislative requirements of the GIPA Act and the GIPA Regulations.

In summary, the audit identified:

- **Existence** – The audit results were consistent with the IPC's previous findings of non-compliance document in its 2020/21 Report. Accordingly, there is an immediate need for all departments to have the information about the additional *open access* available online.
- **Accessibility** – To achieve compliance, departments need to implement changes to ensure information about additional *open access* is available online and in a format that is easy for citizens to view.

- **Completeness** – To achieve compliance, departments need to improve on the completeness of the information they provide to citizens.
- **Currency** – The level of compliance requires a significant uplift to ensure the currency of information available to citizens.
- **Policy and Processes** – While certain departments indicated they were developing policies and processes, departments must focus on developing robust policies and procedures that will underpin their compliance with the additional *open access* requirements.

5.2. Recommendations

Based on the findings, the departments should take immediate action to implement measures recommended from the findings of the desktop audit. In doing so, departments will not only be complying with the additional *open access* requirements but also assisting to enable greater transparency between the government and citizens.

Based on the findings in this audit, it is recommended that each department review and implement, where required, the following recommendations within the timeframes specified.

Recommendations	
Recommendation 1:	It is recommended that, within 6 months of this report departments that do not maintain a list of major assets and disposals, as required by clause 6(2)(a) and clause 6(2)(b) of the GIPA Regulation, should as a matter of priority take steps to do so.
Recommendation 2	It is recommended that, within 6 months of this report departments that do not make publicly available an <i>open access</i> list of assets and acquisitions, as required by clause 6(2)(a) of the GIPA Regulation, should as a matter of priority take steps to make this information publicly available.
Recommendations 3	It is recommended that where departments rely on their annual reports to detail the major assets, acquisitions, and disposal information that they should ensure linkages between their websites and annual reports, and depending on how the information is presented, provide citizens with guidance on interpreting this information.
Recommendation 4	It is recommended that departments take steps to actively ensure ease of locating <i>open access</i> information.
Recommendation 5	It is recommended that within 6 months of this report, departments take steps to ensure that both a list of major assets, and a list of major assets acquired in the previous financial year, as required by clause 6(2)(a) of the GIPA Regulation, is made publicly available.
Recommendation 6	It is recommended that departments take steps to ensure that the information includes the total number, and total monetary value of properties disposed of in the previous financial year, as required by clause 6(2)(b) of the GIPA Regulation.

Recommendations	
Recommendation 7	It is recommended that departments take steps to ensure that where the requirements of Clause 6(2) of the GIPA Regulation are to be satisfied through its annual report, the publication occurs promptly after 30 June each year to enable citizens to access the additional <i>open access</i> information in a timely manner, consistent with the object of the GIPA Act.
Recommendation 8	It is recommended that departments should develop internal processes to ensure the information is provided in a timely and consistent manner.
Recommendation 9	It is recommended that departments take this as an opportunity to review and implement processes and procedures to ensure continual reviewing and updating of the department's additional <i>open access</i> requirements.
Recommendation 10	It is recommended that within 6 months of this report, departments develop internal policies and procedures to ensure compliance with the additional open access obligations.
Recommendation 11	It is recommended that departments also provide internal training to staff with responsibilities for the management and publication of information that is the departments additional <i>open access</i> requirements under sub-clause 6(2) of the GIPA Regulation.
Recommendation 12	It is recommended that departments should review TPP 19-07 Asset Management Policy to inform and align their compliance for publication of their additional <i>open access</i> information.
Recommendation 13	It is recommended that departments include details of the internal authorisation process adopted concerning the approval and publication of additional <i>open access</i> information when developing documented policies and procedures.

6. Monitoring

The IPC will continue to assist departments to adopt these recommendations and provide regulatory assistance to departments to improve their compliance.

Appendix A - Audit Methodology

This audit was undertaken in accordance with section 17(g) of the GIPA Act to monitor, audit and report on the exercise of functions, and compliance with the GIPA Act, by agencies. Its purpose was to review the ten government departments and assess each department's effectiveness in their compliance with the additional *open access* requirements under the GIPA Act and GIPA Regulations.

In undertaking this review, the IPC developed a questionnaire and administered this via Microsoft Forms. The IPC requested that each department undertake a self-assessment of its compliance with the GIPA Act and GIPA Regulations using the IPC's Self-Assessment Tool. The IPC reviewed each department's compliance with the GIPA Act and GIPA Regulations as described in each department's respective self-assessment.

This review was limited to:

- a desktop assessment and review of each department's self-assessment of its compliance;
- review of each department's website;
- review of materials published by each department, such as Annual Reports; and
- departments' responses to a survey and supporting policies and procedures where provided.

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; and
- focused on identifying compliance risks and informed by department responses.

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

Following the audit, the IPC was notified by some departments of additional steps that had been taken to update its information in relation to additional *open access* requirements. In this regard, we acknowledge that in some cases the point in time nature of the audit may not reflect the subsequent steps taken by those departments to improve their compliance with the requirements of section 6 of the GIPA Act.

Limitations

In conducting the desktop analysis, no assessment has been undertaken in relation to the accuracy of, or the monetary values, that have been published by each respective department. The IPC acknowledges that it is not in a position to comment on the accounting methodology undertaken by each department in calculating either the assets, acquisitions or disposals.

The IPC acknowledges that the term '*major assets*' is not defined in the GIPA Act or the GIPA Regulations. During the desktop analysis, the IPC did encourage departments to consider TPP 19-07.

However, the IPC acknowledges that what amounts to a major asset will be contextual to the nature and function of each department, and the respective agencies and organisations that fall under their cluster.

The desktop analysis reflects a point in time, and the IPC acknowledges that it may be the case that updates may have occurred after the analysis and therefore are not reflected in the findings or observations. Additionally, the IPC recognises that the timing of this audit placed the DEIT in a unique position because of its newly established status as a department and coming into existence effective 1 April 2022. In this regard it had yet to publish an annual report and as such a report was not yet due.

Conduct of the analysis

The analysis of each department's adherence to the open access requirements was undertaken by the IPC in late August and early September 2022. IPC staff examined each department's response in the Self-Assessment tool, in conjunction with publicly available information on each department's respective website. An assessment of each department was performed with reference to the Self-Assessment Tool, data and observations recorded.

The IPC recorded and retained data in undertaking the audit; and for the purposes of this report, it was deemed unnecessary to provide a breakdown as the findings and recommendations are applicable generally to all departments and not specifically.

Acknowledgments

The IPC appreciates the assistance and co-operation provided by each department, and its staff, during the review and assessment. The IPC remains available to assist each department as they continue to work in fulfilling their *open access* obligations in accordance with the GIPA Act and the GIPA Regulations.

Assessment criteria

The IPC assessed each department's compliance with the GIPA Act and GIPA Regulations against the criteria identified in the Self-Assessment tool. The criteria are set out in the table below.

Assessment criteria
1. Existence
2. Accessibility <ul style="list-style-type: none"> I. Additional requirements are easy to locate. II. Additional requirements are fully accessible to all users.
3. Completeness <ul style="list-style-type: none"> I. A list of major assets is classified and highlights the major acquisitions in the previous financial year. II. Published information include the number and value of properties disposed of in the previous financial year.
4. Currency <ul style="list-style-type: none"> I. Publication of additional <i>open access</i> requirements has occurred in the previous 12 months. II. Department demonstrates that there is a process for the review and updating of the additional <i>open access</i> requirements.
5. Policy and Processes <ul style="list-style-type: none"> I. There are documented policies and procedures. II. Policy refers to TPP 19-07, Asset Management Policy. III. The policy provides a clear authorisation process.

Existence

The IPC assessed the extent to which the required information, that being the department's assets, acquisitions and disposal of assets, has been made available as *open access* information.

Criterion		Result
I.	The disclosure of assets and acquisitions by departments are publicly available	
a	The disclosure of interests for both assets and acquisitions are published and publicly available on the department's website.	Complies
b	The disclosure of interests of either assets or acquisitions, but not both, are published and publicly available on the department's website.	Partial compliance
c	A disclosure of assets or acquisitions has not been published and/or is not publicly available on the department's website.	Does not comply

Accessibility

The second criteria considered by the IPC in assessing the responses from each department was the extent to which the assets, acquisitions and disposals lists can be easily located.

Criterion		Result
I.	Additional open access requirements, assets and acquisitions, are easy to locate on the department's website	
a	Additional <i>open access</i> requirements are in a readable format, clearly labelled and well organised. They can be navigated to from the department's home page in a straightforward manner. The returns can be found through a search of the departments home page.	Complies
b	Additional <i>open access</i> requirements can be found in a readable format on the website, but labelling is unclear, returns are unorganised and ineffectively categorised, navigation requires clicks through multiple pages and/or returns cannot be found through a search of the department's website.	Partial compliance
c	Additional <i>open access</i> requirements cannot be found on the website, or else can only be found by considerable effort and/or the returns are in a difficult to read format, such as non-machine-readable scanned copies of physical documents.	Does not comply

Open access information is to be publicly available free of charge on a department's website (unless to do so would impose unreasonable additional costs) on the department or there exists an overriding public interest consideration against disclosure of the information. To satisfy the criterion a department needed to demonstrate that the disclosure was fully accessible without conditions.

Criterion		Result
II.	The disclosure of additional <i>open access</i> requirements is fully accessible to all users on the website without condition	
a	There is no barrier to access, such as login requirements or access request processes.	Complies
b	There is minimal barrier to access, the processes to be granted access is clearly described, and requires minimal information from the individual requesting access. Access is granted without conditions.	Partial compliance

Criterion		Result
c	The additional <i>open access</i> requirements are inaccessible, is only granted with conditions, and/or has significant barriers to access, such as poorly described request procedures, a requirement to go through offline channels such as phone calls or in person requests, or the requirement to submit information about the individual requesting access and their reason for doing so.	Does not comply

Completeness

Criterion		Result
I.	A list of major assets (other than land holdings) is appropriately classified and highlighting the major acquisitions during the previous financial year¹⁶	
a	The published assets and acquisitions are classified and include the major acquisitions for the previous financial year.	Complies
b	The published information includes either the assets (appropriately classified) or acquisitions for the previous financial year but not both.	Partial compliance
c	Neither a list of major assets or major acquisitions is published.	Does not comply
II.	The published information includes the number and total value of properties disposed of in the previous financial year	
a	The published list states the total number and value of properties disposed of in the previous financial year.	Complies
b	The published information includes either the total number of properties disposed of or the value but not both.	Partial compliance
c	Neither the total number of disposals or value is available.	Does not comply

Currency

Criterion		Result
I.	Publication of the previous financial year additional open access requirements has occurred promptly	
a	There is evidence that the publishing of additional <i>open access</i> requirements has occurred promptly after 30 June of the immediate past financial year.	Complies
b	N/A	Partial compliance
c	There is no evidence that the publishing of additional <i>open access</i> requirements has occurred promptly after 30 June of the immediate past financial year.	Does not comply
II.	Publication demonstrates that there is a process for the review and updating of the disclosure of interests	
a	There is evidence of a process that is consistently followed for updating and publishing the additional <i>open access</i> requirements. Evidence may include recent publications, information showing regular and consistent publication dates.	Complies

¹⁶ Clause 6(2)(a) GIPA Reg

Criterion		Result
b	N/A	Partial compliance
c	There is no evidence that the process for updating and publishing the additional <i>open access</i> requirements has occurred promptly after 30 June of the immediate past financial year.	Does not comply

Policy and Procedure

Criterion		Result
I.	Does the department maintain documented policies and procedures regarding additional open access requirements?	
a	A policy/procedure addressing the publication of additional <i>open access</i> requirements for assets and acquisitions exists.	Complies
b	A policy notionally addressing the publication of additional open access exists.	Partial compliance
c	No such policy for publication of exists, or such as policy is under-development/ has not been finalised.	Does not comply
II.	Does the policy define/refer to an asset management framework as required by TPP19-07	
a	The department's policy defines and refers to an asset management framework and TPP 19-07.	Complies
b	N/A	Partial compliance
c	The policy does not define/refer to an asset management framework required by TPP19-07.	Does not comply
III.	The policy makes clear the authorisation process for the approval and publication of assets and acquisitions	
a	The policy addressing the publications of assets and acquisitions makes clear the authorisation process for the approval and publication of assets and acquisitions.	Complies
b	N/A	Partial compliance
c	The policy addressing the publication of assets and acquisitions does not make clear the authorisation process for the approval and publication, or such a policy does not exist.	Does not comply

Appendix B - Audit chronology

Date	Event
1 August 2022	Notice of Audit issued
15 August 2022	Audit Responses due
12 September 2022	Desktop Audit assessment completed
October 2022 – April 2023	Report drafting
2 June 2023	Provision of final report to departments and publication

Appendix C - Abbreviations

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

Acronym or abbreviation	Explanation
GIIC Act	<i>Government Information (Information Commissioner) Act 2009</i>
GIPA Regulation	<i>Government Information (Public Access) Regulation 2018</i>
GIPA Act	<i>Government Information (Public Access) Act 2009</i>
GSE Act	<i>Government Sector Employment Act 2013</i>
GSF Act	<i>Government Sector Finance Act 2018</i>
IPC	Information and Privacy Commission NSW
TPP19-07	NSW Treasury – Asset Management Policy for the NSW Public Sector

Appendix D - Legislation

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

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

- Section 6 – Mandatory proactive release of certain government information
- Section 18 (g) – What constitutes open access information

Government Information (Public Access) Regulation 2018

- Clause 6 – Additional open access information of certain agencies

Government Information (Public Access) Act 2009

- **6 - Mandatory proactive release of certain government information**

- (1) An agency must make the government information that is its open access information publicly available unless there is an overriding public interest against disclosure of the information.

Note—Part 3 lists the information that is open access information.

- (2) Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.
- (3) At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.
- (4) An agency must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.
- (5) An agency must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.
- (6) Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright

- **18 - What constitutes open access information**

- (g) such other government information as may be prescribed by the regulations as open access information.

Government Information (Public Access) Regulation 2018

- **6 - Additional open access information of certain agencies**

(2) **Government Departments** For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a Government Department—

- (a) a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year,
- (b) the total number and total value of properties disposed of by the Department during the previous financial year,
- (c) the Department's guarantee of service (if any),
- (d) the Department's code of conduct (if any),

- (e) any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.
- (3) The reference in subclause (2) to a Government Department includes a reference to—
- (a) a Public Service agency, within the meaning of the *Government Sector Employment Act 2013*, except a Staff Agency listed in that Act, Schedule 1, and
 - (b) the Independent Commission Against Corruption, and
 - (c) the NSW Police Force, and
 - (d) the Judicial Commission of New South Wales.
- (4) **Relevant entities** For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a public authority that is a relevant entity—
- (a) the total number and total value of properties disposed of by the relevant entity during the previous financial year,
 - (b) the relevant entity's guarantee of service (if any).
- (5) In this clause—
- relevant entity** means each of the following—
- (a) a statutory body representing the Crown, including a NSW Government agency to which the *Interpretation Act 1987*, section 13A applies,
 - (b) a Council, within the meaning of the *Health Practitioner Regulation National Law (NSW)*, Part 5A,
 - (c) an entity with money held in an account within the Special Deposits Account, within the meaning of the *Government Sector Finance Act 2018*, except a Government Department covered by subclause (3).