

The Role of Access to Information in Development

Presentation to ICIC Philippines 2023

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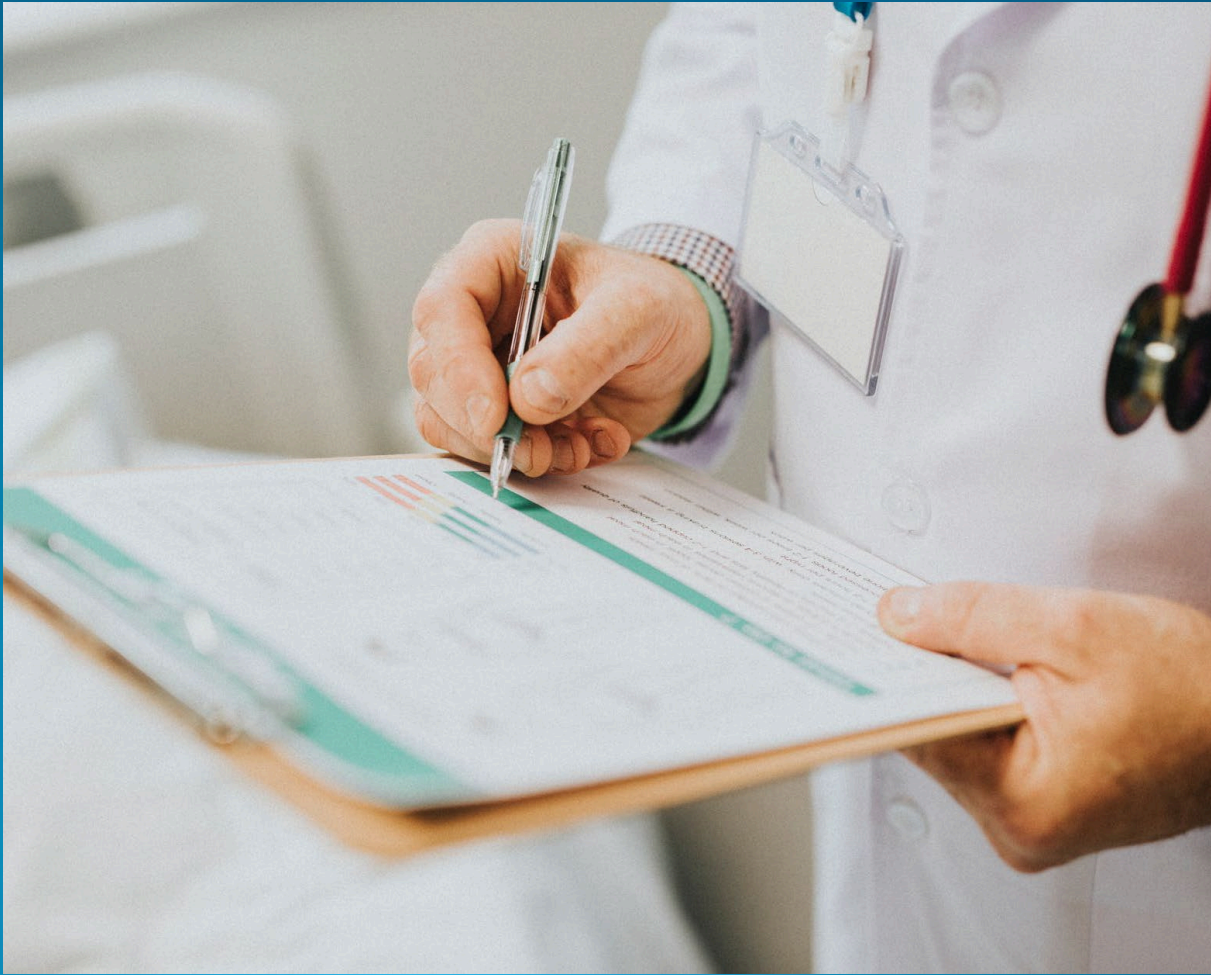
NSW Open Data Advocate



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O'Brien v Dept Communities and Justice

- **Right of access to enable assertion of rights**
- Outsources algorithm
- Third party contractor – Intellectual Property
- Diminution of rights under section 121 of the *Government Information (Public Access) Act 2009* (GIPA Act):
 - (a) information that relates directly to the performance of the services by the contractor,
 - (b) information collected by the contractor from members of the public to whom it provides, or offers to provide, the services,
 - (c) information received by the contractor from the agency to enable it to provide the services
- **Is AI decision making or service provision or both, how do we audit?**

***Redfern Legal
Centre v
Commissioner
of Police [2021]
NSWCATAD
288***

- The Tribunal preferred the narrower construction of "**government information**"; that government information is limited to information which exists at the time of the access application.
- In making that determination the Tribunal had regard to:
 - the context of the **GIPA Act**, particularly
 - section 53(1) which limits the obligation on an agency to provide access to government information in response to an access application to information held by the agency when the application is received
 - section 75 which provides that an agency is not obliged to create a new record in response to an access application

***Ooi v NSW
Ministry of
Health [2023]
NSWCATAD
107***

- Request for the **patient data** used to **generate a report** of patients with a COVID diagnosis, vaccination status, severity of their illness, and age group.
- Agency – **did not hold a record/report**. Report to produce a snapshot at a particular point in time; access to data is only permitted for very limited purposes and is not to be retained other than for the prescribed purpose; linked patient information is extremely sensitive and the retention of those records would give rise to privacy concerns.
- Applicant offered that there must at least be a back-up and the agency is obliged to keep records under the *State Records Act 1998* (NSW).
- Found that the **agency does not hold the information sought** and that it is only in circumstances where access is to be given to information held that the discretion to make a new record arises.

***Ireland v
Central Coast
Council [2022]
NSWCATAD
366***

- In considering that the flood depth levels calculated by a proprietary flooding database developed by a private engineering consultancy, the Tribunal found that it was not clear on the evidence before it whether:
 - there was a government contract within the meaning of s. 121 of the GIPA Act
 - the calculation that is undertaken by way of an algorithm is provided to the Council under the contract
 - ownership of the dataset rests with the Council, or
 - that the Council has an “immediate right of access” to the information under a contract with the developer of the database.

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