



information
and privacy
commission
new south wales

Agency compliance with Disclosure Log requirements – GIPA Compliance Report

January 2024



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1. Executive summary

The object of the *Government Information (Public Access) Act 2009* (GIPA Act) is to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective. Accordingly, the mandatory release of open access information under the GIPA Act assists in promoting a responsible and representative government by enshrining the public's right of access to important government information.

Disclosure logs¹ are one category of open access information that NSW agencies must make publicly available under section 6 of the GIPA Act. Part 3 Division 4 of the GIPA Act prescribes mandatory requirements concerning the maintenance of disclosure logs by agencies.

Disclosure logs satisfy, in part, the requirements for agencies to identify: the kinds of information held by the agency, that it makes or will make publicly available and information that is available free of charge and those for which a charge is imposed.² Accordingly, disclosure logs form part of agencies' Agency Information Guide (AIG).³ AIG's must be updated every twelve months.⁴ Currency and accessibility of disclosure logs are essential to meeting agency obligations and are therefore examined in this audit.

In this audit, a representative sample of 79 agencies across four sectors were assessed with respect to their compliance with disclosure log obligations. The findings of this audit identified that agencies generally complied with the requirement to ensure that their disclosure logs are publicly available and easily accessible. The audit also provided evidence that agencies would benefit from ensuring that their disclosure logs contain details about how the information recorded in the disclosure log can be accessed and that the disclosure log is current.

In summary:

- 91% (72) of agencies had made their disclosure log publicly available on their website⁵
- 83% (66) of agencies maintained disclosure logs that were easily located on the agency's website⁶
- 85% (67) of agencies included the dates of the access application decisions for each entry in their disclosure logs⁷
- 87% (69) of agencies included a description of the information that was released in response to each access application for each entry in their disclosure log⁸
- 74% (58) of agencies included details about how the relevant information can be accessed in their disclosure log⁹
- 57% (45) of agencies had updated their disclosure log in the past 12 months¹⁰.

¹ *Government Information (Public Access) Act 2009* ('GIPA Act') s 25

² GIPA Act ss 20(1)(d)(e) and (g)

³ GIPA Act s 20

⁴ GIPA Act s 21

⁵ GIPA Act s 6(2)

⁶ GIPA Act ss 3(1)(a), 3(2)(b) and 6(2)

⁷ GIPA Act s 26(1)(a)

⁸ GIPA Act s 26(1)(b)

⁹ GIPA Act s 26(1)(c)

¹⁰ GIPA Act s 20(1)

While it is pleasing to see that the vast majority of the agencies sampled had a disclosure log in place that is publicly available, there is a longstanding expectation that all agencies are aware of their open access obligations, particularly in relation to disclosure logs.

Accordingly, it is concerning that a minority of sampled agencies do not appear to be cognisant of these obligations and failed to ensure that their disclosure log is publicly available. More concerning are the non-compliance practices from certain agencies, including: publication of a document entitled disclosure log absent any entries; as well as advice that members of the public were required to request a copy of the agency's disclosure log. This occurred in 9% (7) of agencies sampled. The sector breakdown of this non-compliance is as follows:

- Local Council (5)
- University (1)
- State Owned Corporation Sectors (1).

It is also concerning that almost half of the agencies sampled did not demonstrate that their disclosure logs were current and updated on a regular basis. These results demonstrate that further action is needed by agencies to uplift their governance processes and procedures to ensure compliance and best practice in accordance with disclosure log obligations and the objects of the GIPA Act more broadly. The guidance provided in this report will assist agencies to improve compliance with their obligations.

Whilst the results demonstrate positive levels of compliance there are some identified non-compliant practices that will inform the Information Commissioner's forward work program.

Given the levels of non-compliance within the Local Council Sector identified this Report and the past history of regulatory engagement regarding proactive disclosure requirements the Report will be referred to the Office of Local Government in accordance with section 33(2)(a) of the *Government Information (Information Commissioner) Act 2009* (GIIC).

2. Background and purpose of the audit

Disclosure logs are integral to making important government information publicly available, as they require agencies to maintain a record of, and provide access to, information disclosed by agencies in response to access applications that may be of interest to other members of the public. By ensuring that this information is proactively disclosed to the public, agencies assist in uplifting accountability and promoting engagement with the public. Disclosure logs are an efficient measure of ensuring 'self-service' by citizens and may prevent the need for more resource intensive mechanisms, such as formal access applications. The benefits of this legislated mechanism also include:

- promotion of open government and transparency
- ease of access to government information of public significance to the NSW community,
- increasing community participation in government processes and decision-making.

There are real benefits that flow from the proactive release of government information and promoting open government. These include improved service delivery, a more informed community, and a reduction in costs and resourcing by decreasing the number of access applications submitted to an agency. It is therefore imperative that agencies understand the open access requirements of the GIPA Act, including disclosure logs, and establish effective governance frameworks to ensure compliance with these obligations.

Part 3 of the GIPA Act is intended to open government information to the public by authorising and encouraging the proactive public release of government information by agencies, giving members of the public an enforceable right to access government information, and providing that access to government information is restricted only when there is an overriding public interest against disclosure.

Section 6 of the GIPA Act requires the mandatory proactive release of certain government information. Section 18 of the GIPA Act establishes the type of government information held by an agency that constitutes open access information and is required to be made publicly available by the agency under section 6 of the GIPA Act. Open access information includes an agency's disclosure log of access applications.

Pursuant to section 25 of the GIPA Act, agencies must keep a disclosure log that records details about information released in response to access applications that it considers to be of interest to other members of the public.

The principles of the GIPA Act that must be applied by agencies in determining access requests require them to: consider that disclosure cannot be made subject to any conditions on the use or disclosure of information.¹¹ This provision is often relied upon to refuse access because release under the GIPA Act is tantamount to release to the world at large. Having determined to release, information agencies must then also apply this principle in meeting their disclosure log obligations.

Section 26 of the GIPA Act establishes the information about an access application that is required to be recorded in an agency's disclosure log. In particular, where an agency considers that information released in response to an access application would be of interest to other members of the public, it is required to record the following information about each access application in the disclosure log:

- the date the application was decided
- a description of the information to which access was provided, and
- 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.

The purpose of this compliance report is to:

1. provide an overview of agency compliance with open access requirements, specifically relating to disclosure logs, and
2. to make recommendations to improve and support compliance across all sectors.

2.1 Assessment criteria

This audit examined and considered the following assessment criteria reflective of the legislative obligations imposed upon agencies:

Assessment criteria	
Existence of the record	Is the disclosure log publicly available?
Accessibility of the record	Is the disclosure log easily located on the agency's website?
Form of the record	<ol style="list-style-type: none"> a. Does the disclosure log include the date of the decision for each entry? b. Does the disclosure log include a description of the information to which access was provided in response to the application? c. Does the disclosure log include details about how the information can be accessed?
Currency of the record	Does the record indicate that the disclosure log has been updated in the past 12 months?

Table 1. Assessment criteria

¹¹ GIPA Act s 15(e)

3. Methodology and sample selection

In ascertaining the rates of compliance by agencies with respect to the requirement to maintain a disclosure log, it was necessary to undertake a broader assessment based on the proportion of the randomly selected agencies that had made their disclosure log publicly available on their website. Ministers are exempt from the requirement to maintain an AIG.¹² For that reason, the Ministerial Sector was omitted from this audit. However, the recommendations have equal application to the disclosure log requirements of the Ministerial Sector.

A representative sample of 79 agencies were selected for inclusion in this audit. These agencies may be categorised by their agency type, which are:

- Councils
- NSW Government Agencies (including Departments and government organisations)
- State-owned Corporations, and
- Universities (all).

Table 2 illustrates the numbers of agencies that were assessed as part of this audit, based on their agency type.

Agency type	Number of agencies assessed
Councils	52
NSW Government Agencies ¹³	9
State-owned Corporations	8
Universities	10
Total	79

Table 2. Breakdown of selected agencies by type

3.1 Audit limitations

As the focus of this audit is on sector wide compliance rather than compliance by an individual agency, it was determined that a desktop audit would be the most appropriate and efficient means to measure and compare rates of compliance across the sector. Further, the use of a desktop audit in this case allows the IPC to establish a baseline understanding of the compliance rates across the sector and would allow for a direct point-in-time comparison with respect to the same criterion should a follow-up audit be undertaken.

Accordingly, the scope of this audit is limited to a desktop review of the information available on the websites of the selected agencies during mid-October 2023.

Given the nature of desktop audits more generally, this audit is constrained by various factors, including:

- the requirement for independent remote assessment

¹² GIPA Act s 20(1)

¹³ The NSW Government Agencies assessed were limited to the Departments listed in Schedule 1 of the *Government Sector Employment Act 2013 (NSW)*

- the non-inquisitorial nature of the audit, which precludes the seeking of clarification from the selected agencies in relation to the data, and
- the focus of the audit is limited to an assessment as to the existence, accessibility, form and currency of disclosure logs.

Further, given its non-inquisitorial nature, this desktop audit does not assess the completeness or accuracy of the information contained in the disclosure logs.

Additionally, during the course of this desktop audit, it was identified that some agencies did not make their disclosure logs publicly available. These agencies could not be assessed with respect to the criteria concerning 'Form of the record' and 'Currency of the record' as set out in Table 1.

Similarly, some agencies had published their disclosure logs, but their disclosure logs did not record any entries. The disclosure log was found to be a titled document absent any entries.

These agencies could not be assessed with respect to the criteria concerning 'Form of the record' as set out in Table 1.

3.2 Conduct of analysis

The data for the desktop audit was collated mid-October 2023. In collating and analysing the data, the IPC reviewed each agency's website to ascertain:

- whether a disclosure log was available
- the ease in which the disclosure log could be located
- whether the disclosure log includes the date of the decision on the relevant access application for each entry
- whether the disclosure log includes a description of the information to which access was provided
- whether the disclosure log includes details about how the information could be accessed and
- whether it appears that the disclosure log had been updated in the past 12 months.

The findings of this audit are presented in two parts:

- assessment against select criteria as set out above in Table 1.
- specific comments, findings and recommendations to assist agencies in complying with legislated requirements for disclosure logs.

Where an agency was assessed as non-compliant with respect to the legislative requirement to make their disclosure log publicly available, it was not possible to assess that agency in relation to the remaining criteria. This is because the remaining criteria requires assessment of the contents of the disclosure logs.

The IPC recorded and retained data relevant to the assessment of each selected agency. Given the generality of the findings and recommendations in this audit, it is unnecessary to specifically identify or provide a breakdown of the findings for each of the selected agencies. However, as specified in the IPC's Regulatory Framework, regulatory data informs the Information Commissioner's future work program.

4. Observations and findings

4.1 Whether agencies have a disclosure log and have made the disclosure log publicly available

Criterion		Result
1	Existence of the record	Agencies generally demonstrated compliance with the obligation to publish disclosure logs
1(a)	Is the disclosure log publicly available	91% (72) of agencies were fully compliant 9% (7) of agencies were non-compliant

Comments, findings and recommendations
<p>Comments: As a category of open access information, disclosure logs must be made publicly available on each agency's website per section 6(2) of the GIPA Act.</p> <p>Government information which is available and of interest to members of the public will only be effectively accessible to the public, if the that information is readily identifiable. Members of the public reasonably expect that information which is publicly available will be published on an agency's website.</p> <p>The obligations to maintain and to publish a disclosure log on an agency's website ensure that details of government information which may be of interest are published in a consistent and centralised manner.</p> <p>Failure to publish a disclosure log impairs the purpose and function of all disclosure log obligations at Part 3 Division 4 of the GIPA Act.</p> <p>Observations:</p> <p>Figure 1 demonstrates that most agencies were compliant with the essential obligation to make their disclosure log publicly available.</p>

Comments, findings and recommendations

The disclosure log is publicly available

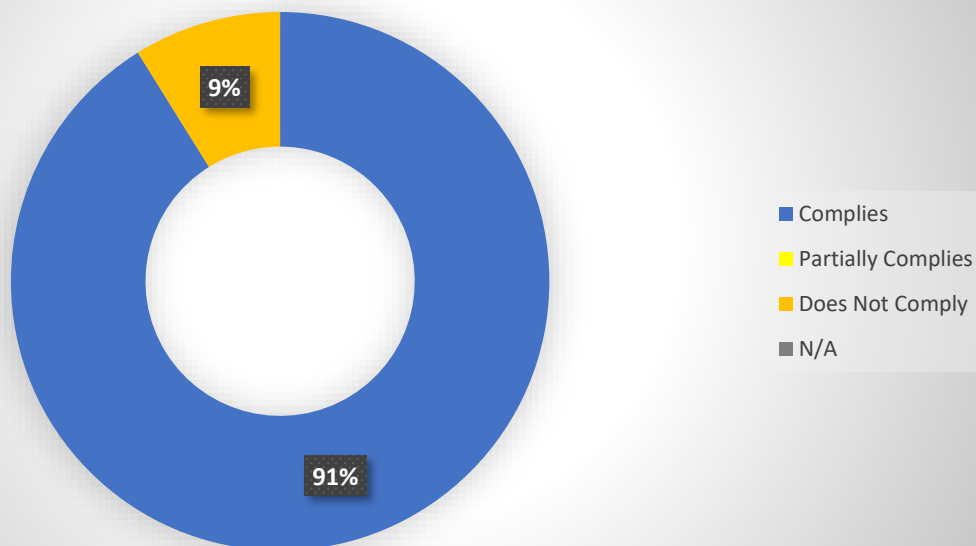


Figure 1: Compliance rates – whether disclosure logs are published to agency website.

Figure 1 illustrates that 91% (72) of agencies had made their disclosure log publicly available on their website.

The disclosure logs of the remaining 9% (7) of agencies either did not exist or could not be located. Accordingly, these agencies were rated as non-compliant for the purposes of this audit. A few of these non-compliant agencies referred generally to the disclosure log requirement within content on their website, but their website had no identifiable record of that nature or that would meet the legislative requirements. In one instance the link to the agency disclosure log was not working and in another, the agency suggested a request for access to the disclosure log was required.

Comments, findings and recommendations

Figure 2 provides a breakdown of the agencies that had made their disclosure logs publicly available by agency type.

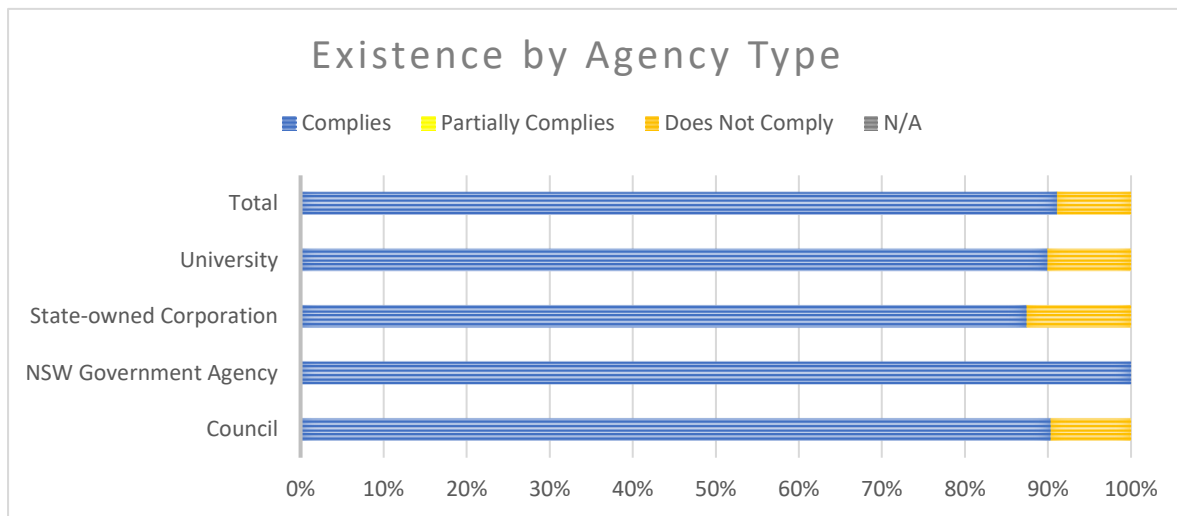


Figure 2: Compliance rates by agency type - whether disclosure logs are published on agency website

The majority of those agencies that were assessed as non-compliant fell within the Council category type (5 out of the 7 agencies assessed as non-compliant). The 2023 *Information Commissioner’s Local Government Sector – Follow-up GIPA Compliance Report*, similarly, found inconsistent levels of compliance by the local government sector with GIPA Act open access obligations.

The requirement to publish a disclosure log is long standing and well understood. Non-compliance with this obligation by agencies is undesirable. All agencies must ensure that they create, maintain, and publish a disclosure log to their website.

Recommendation 1: Agencies should ensure that they comply with the open access obligation to keep a disclosure log, and to ensure that the disclosure log is published on their website.

4.2 Accessibility of the disclosure logs

Criterion		Result
2	Accessibility of the record	Agencies could better uplift the accessibility of disclosure logs by ensuring that their disclosure logs are published in an obvious or prominent location on their websites
2(a)	Is the disclosure log easily located on the agency's website?	83% (66) of agencies were fully compliant 8% (6) of agencies were partially compliant 9% (7) of agencies were non-compliant

Comments, findings and recommendations
<p>Comments:</p> <p>The ease with which an agency's disclosure log can be located serves as an important indicator of an agency's commitment to ensuring proactive access to open access information. Enabling easy access to disclosure logs assists in empowering the public to independently acquire government information without the need to request the information from an agency.</p> <p>Conversely, if an agency's disclosure log is difficult to locate, it would essentially render the purpose of keeping a disclosure log redundant.</p> <p>Compliance regarding accessibility was assessed on whether the disclosure log could be easily located by navigating from the agency's home page with minimum click throughs and in a straightforward manner.</p> <p>Observations:</p> <p>Figure 3 demonstrates that although the disclosure logs of many agencies were easily located, there was still a significant proportion of agencies whose disclosure logs required considerable effort to locate or ultimately could not be found.</p>

Comments, findings and recommendations

The disclosure log is easily located on the website

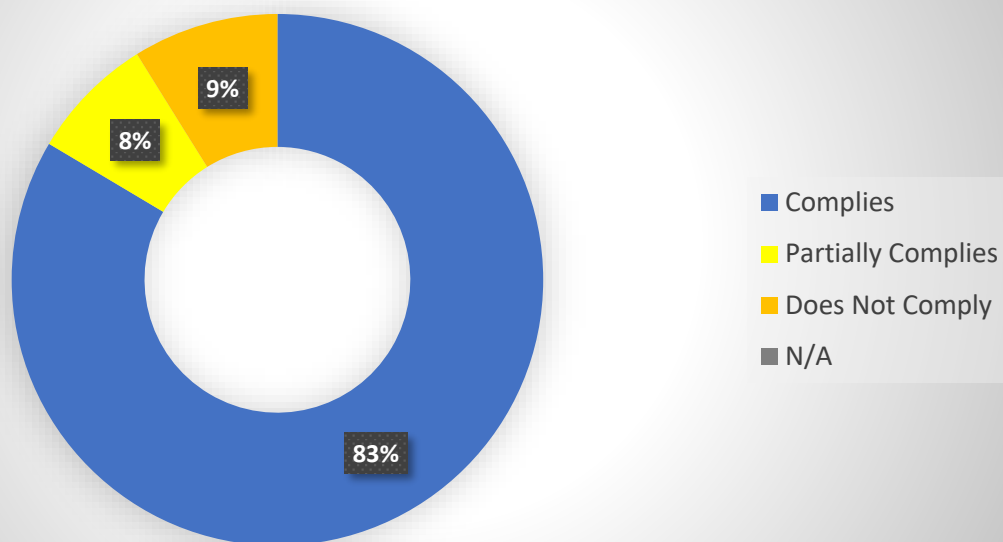


Figure 3: Compliance rates – whether disclosure logs are easily located on agencies' websites

Figure 3 illustrates that of the 79 agencies assessed, 83% (66) of agencies complied with the requirements to make their disclosure log publicly available and to ensure that the disclosure log is easily accessible on their website.

A further 8% (6) of agencies were found to have partially complied with the requirement to ensure that their disclosure log is readily accessible. Navigation to the disclosure logs of these agencies required clicks through multiple pages and could not be easily found through a search of the agency's home page or their access to information page.

The remaining 9% (7) of agencies did not make their disclosure log publicly available.

It was observed that compliant agencies generally published their disclosure logs in a logical location on their websites, such as under a dedicated section on their 'Access to Information' page. Where a member of the public decides to review information on an agency's disclosure log, it is reasonable to expect that this information would be located on the agency's 'Access to Information' page together with other open access information that the agency is required to publish.

With respect to the partially compliant agencies, although their disclosure logs were published on their websites, it was apparent that they were not published in an obvious or prominent location on their website. This adversely impacts the right of access to information by making it difficult for a member of the public to navigate to and locate the disclosure logs.

Comments, findings and recommendations

Figure 4 provides a breakdown of the level of compliance with the measure of whether the disclosure logs are easily accessible based on agency type.

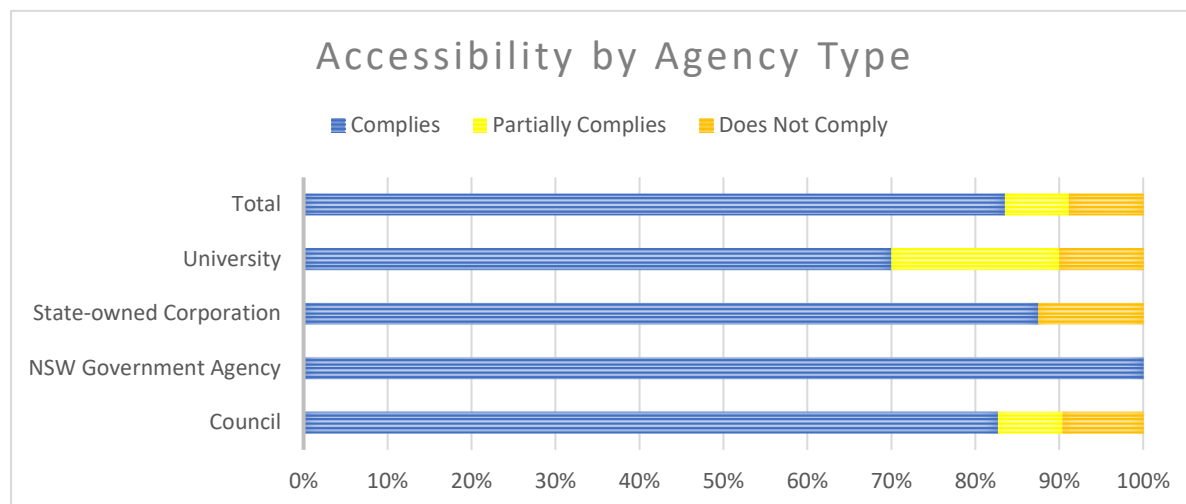


Figure 4. Compliance rates by agency type – whether disclosure logs are easily located on agencies’ websites

Figure 4 illustrates that the level of compliance with this measure was lowest in the university sector, whereby only 70% of universities ensured that their disclosure logs were easily located.

Figure 4 also highlights that the NSW Government Agency sector demonstrated full compliance with this measure.

Recommendation 2: Agencies should ensure that their disclosure logs are easily and prominently located on their ‘Access to Information’ webpage.

4.3 Whether disclosure logs contain required information about access applications

Criterion		Result
3	Form of record	Agencies generally demonstrated good compliance with ensuring that the required information about access applications are included in their disclosure logs.
3(a)	Does the disclosure log include the date of the decision for each entry?	85% (67) of agencies were fully compliant 2% (2) of agencies were non-compliant 13% (10) of agencies could not be assessed on this measure, as they had not made their disclosure logs publicly available or had no entries in their disclosure log
3(b)	Does the disclosure log include a description of the information to which access was provided in response to the application?	87% (69) of agencies were fully compliant 13% (10) of agencies could not be assessed on this measure, as they had not made their disclosure logs publicly available or had no entries in their disclosure log
3(c)	Does the disclosure log include details about how the information can be accessed?	74% (58) of agencies were fully compliant 15% (12) of agencies were non-compliant 11% (9) of agencies could not be assessed on this measure, as they had not made their disclosure logs publicly available

Comments, findings and recommendations

Where an agency considers that information disclosed in response to an access application may be of interest to other members of the public, it must record information about the access application. Section 26 of the GIPA Act relevantly sets out the information about the access application that is required to be recorded in the agency's disclosure log. The required information to be recorded includes:

- (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 any of the information is now available from the agency to other members of the public and (if it is) how it can be accessed.

As noted above at 3.1, a limitation of this audit concerns the agencies that did not make their disclosure log publicly available, or where they had a disclosure log available, they had not recorded any entries in the disclosure log. The agencies that fell within either of these categories could not be assessed against this criterion.

With respect to the category of agencies that did not record any entries in their disclosure log, some of these agencies had included a notice on their websites stating that they did not have any information to include in their disclosure logs at this time.

Comments, findings and recommendations

It is acknowledged that section 25 of the GIPA Act provides that information need only be included in the disclosure log if the agency considers that it would be of interest to other members of the public. While this provides agencies with some discretion in determining whether information should be included in the disclosure log, agencies are encouraged to adopt a more liberal approach when considering whether information disclosed in response to an access application would be of interest to other members of the public. The application of the GIPA Act by agencies and the exercise of discretion is to be conducted in a manner that facilitates access promptly and at the lowest reasonable cost and promotes the object of the GIPA Act.¹⁴

Having regard to the operation of the GIPA Act in totality together with the purpose and benefits of making information available on disclosure logs, it is likely that the proactive disclosure of government information through disclosure logs will assist in reducing the number of access applications made to the agency for information that has previously been disclosed.

4.3(a) Does the disclosure log include the date of the decision for each entry?**Comments:**

Part of the criterion concerning the form of the disclosure logs examined whether the selected agencies had recorded the dates of the access application decisions for each entry in the disclosure log.

Compliance with this measure was assessed on whether each entry within an agency's disclosure log contained the date of the decision for the particular access application.

Observations:

Figure 5 illustrates the compliance rates with this measure. It was found that most agencies recorded the dates of decisions for each entry in their disclosure logs. However, some agencies could not be assessed, as they did not make their disclosure log publicly available, or their disclosure log did not contain any entries.

¹⁴ GIPA Act ss 3(2)(a)-(b)

Comments, findings and recommendations

The disclosure log includes the date of the decision for each entry

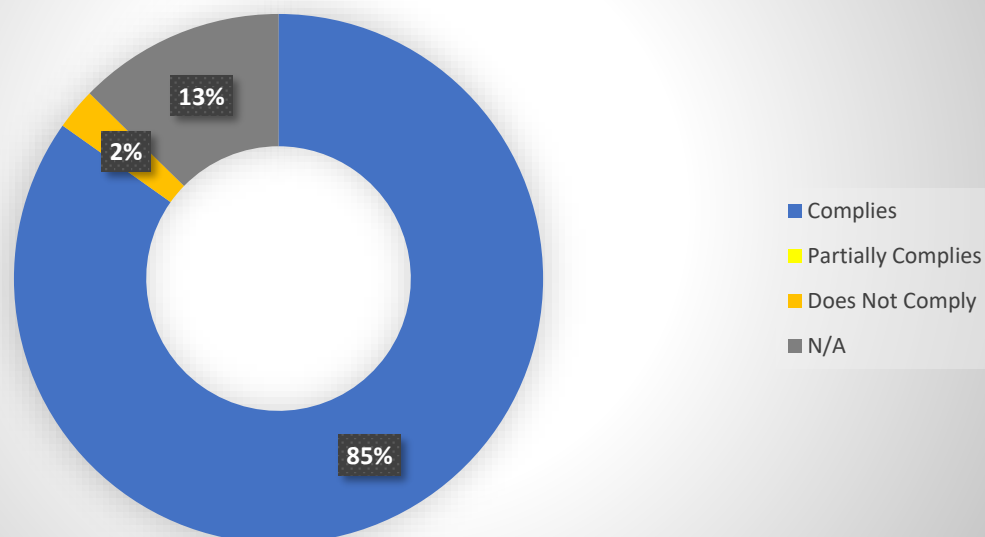


Figure 5. Compliance rates – whether disclosure logs include the date of decision for each entry

As set out in Figure 5, 85% (67) of agencies had included the dates of the relevant access applications for each entry in their disclosure logs.

Approximately 2% (2) of agencies did not record the dates of the relevant access applications against each entry in their disclosure logs and were assessed as non-compliant.

The remaining 13% (10) of agencies could not be assessed against this measure because they either did not publish their disclosure logs on their websites or did not record any entries in their disclosure logs.

Figure 6 provides a breakdown of the level of compliance with the measure of whether the disclosure logs included the dates of decisions for each entry based on agency type.

Comments, findings and recommendations

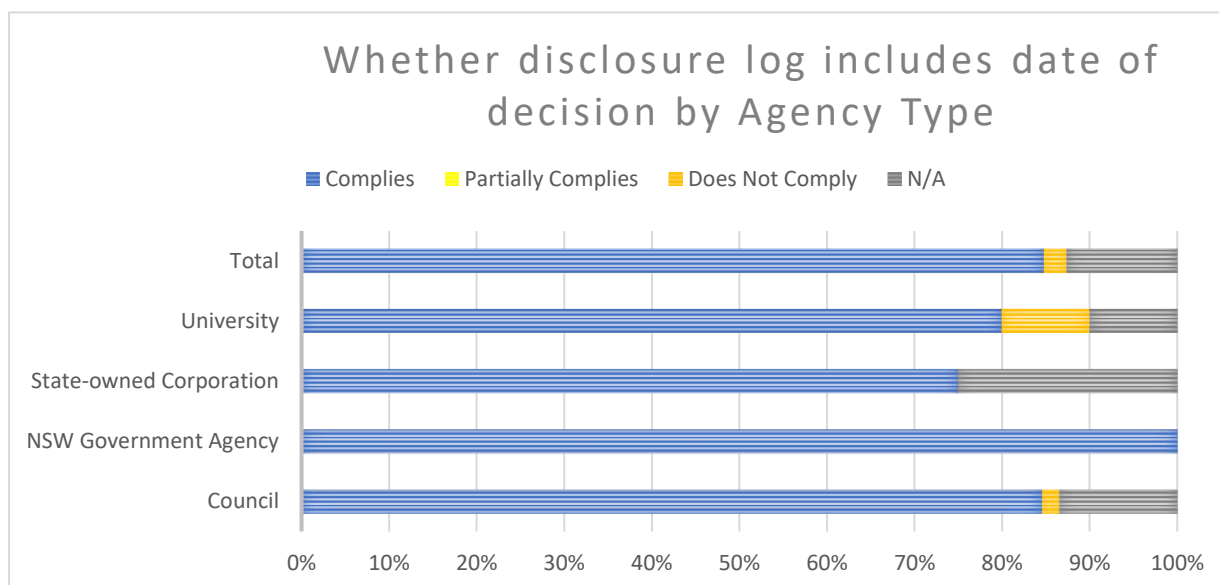


Figure 6. Compliance rates by agency type – whether disclosure logs include the dates of decisions for each entry

Figure 6 observes that the NSW Government Agency sector demonstrated full compliance with the requirement to record dates of access application decisions in their disclosure logs. However, it was found that there was less compliance against this measure across the other agency types.

Recommendation 3: Agencies should ensure that their disclosure log complies with section 26(1)(a) of the GIPA Act by recording the dates the relevant access applications were decided for each entry in their disclosure log.

4.3(b) Does the disclosure log include a description of the information to which access was provided in response to the application?

Comments:

Section 26(1)(b) of the GIPA Act requires that agencies are to record in their disclosure log a description of the information to which access was provided in response to the access application.

In this assessment, the disclosure log was considered to comply if it provided a clear and meaningful description of what the information is or what it relates to. A non-complying disclosure log did not provide a description of the information at all, or if a description was included, the description was vague, non-specific and lacking in clarity.

Observations:

Figure 7 sets out the compliance rates with the requirement to include a description of the information to which access was provided in response to an access application.

Comments, findings and recommendations

The disclosure log includes a description of the information to which access was provided in response to the application

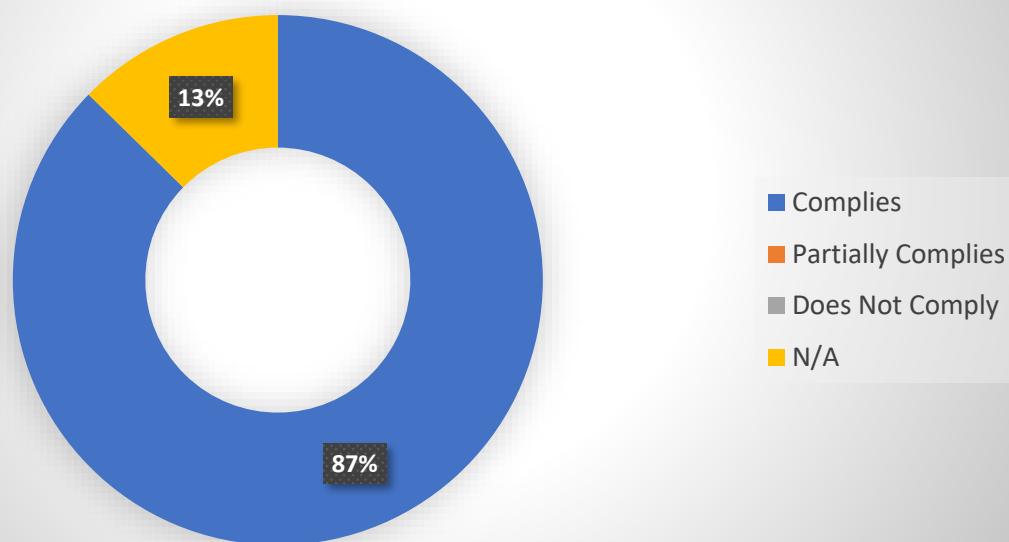


Figure 7. Compliance rates – whether disclosure logs include a description of the information to which access was provided in response to the application

Of the 79 agencies, the disclosure logs of 87% (69) of agencies included a description of the information that was released in response to an access application.

The remaining 13% (10) of agencies either did not have a disclosure log publicly available on their website or, whilst they had a disclosure log, they did not have any information within that log that could be assessed (e.g. no entries in the log). These agencies have been assessed as 'N/A' for the purposes of this measure.

Overall, it was observed that there was strong compliance with the requirement to include a description of the relevant information. Pleasingly, of the agencies that had made their disclosure log publicly available for which entries were included, there were no agencies that did not comply with the requirement in section 26(1)(b) of the GIPA Act.

Figure 8 below illustrates the compliance rates with this measure based on agency type.

Comments, findings and recommendations

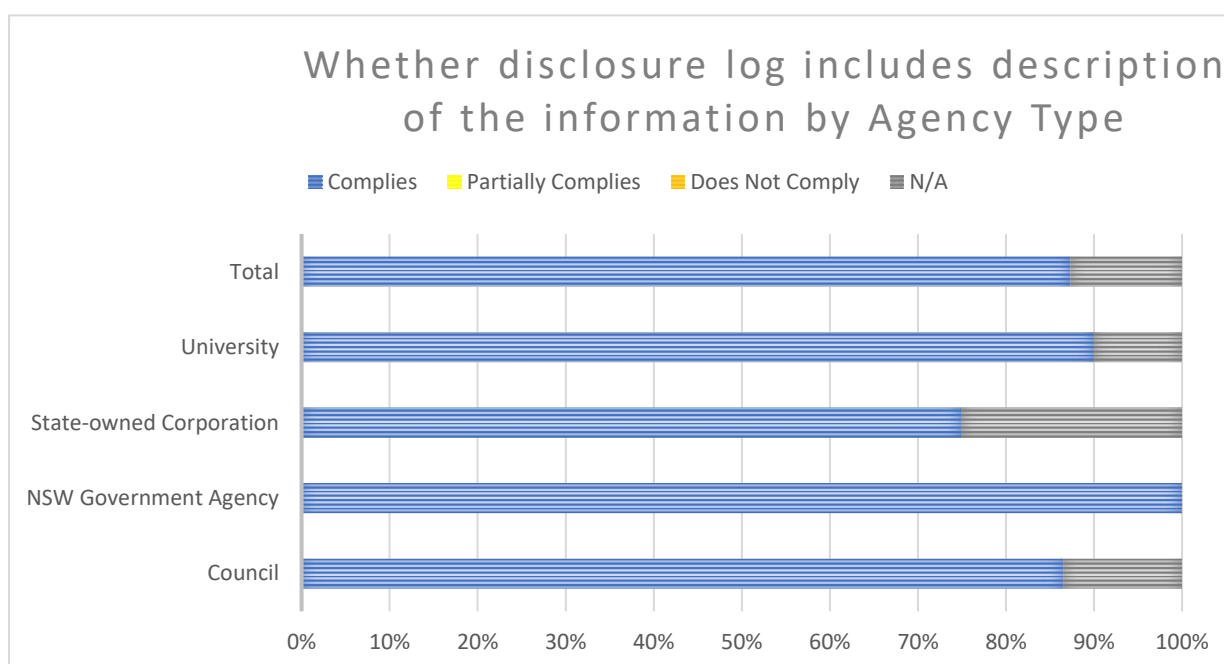


Figure 8. Compliance rates by agency type – whether disclosure log includes description of the information

When the results are arranged by agency type, it was observed that NSW Government Agencies demonstrated full compliance. All NSW Government Agencies assessed published their disclosure log on their websites and included details of the information released in response to access applications.

Other sectors demonstrated varying levels of compliance.

4.3(c) Does the disclosure log include details about how the information can be accessed?

Comments:

Section 26(1)(c) of the GIPA Act requires agencies to record in their disclosure log a statement as to whether any of the information is now available from the agency to other members of the public and, if it is, how it can be accessed.

Agencies were considered to have complied if either of the following were met:

- the information could be downloaded via a link provided against each entry in the disclosure log, or
- if the disclosure log included a statement explaining how the information can be accessed.

An agency would be assessed as non-compliant if their disclosure log did not include a link or provide an explanation as to how the information can be accessed.

Observations:

Figure 9 illustrates the compliance rates with the requirement to include a statement regarding availability and how the information can be accessed.

Comments, findings and recommendations

The disclosure log includes details about whether the information is available to the public and how the information can be accessed

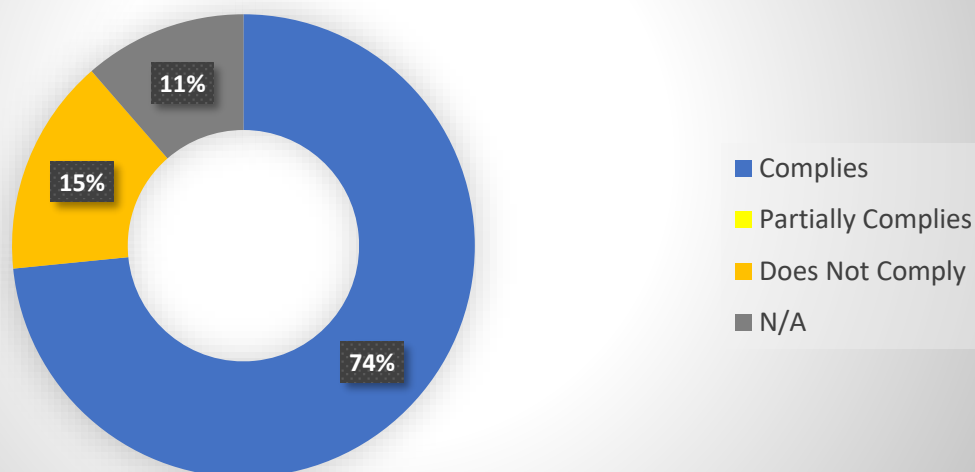


Figure 9. Compliance rates – whether the disclosure log includes details about whether the information is available to the public and how the information can be accessed

It was observed that the disclosure logs of 74% (58) of agencies included details about the availability of the information to the public and how that information can be accessed. Accordingly, these agencies were assessed as compliant for the purposes of this audit.

However, 15% (12) of agencies were assessed as non-compliant, as their disclosure logs did not contain information about how the information can be accessed within the disclosure log itself or, whilst the disclosure log contained a general statement about access, it did not include any reference to facilitate access to that information as required.

The remaining 11% (9) of agencies either did not have a disclosure log publicly available on their website or had a disclosure log but they did not record any information within that log that could be assessed. These agencies were assessed as 'N/A' for the purposes of this measure.

For the purposes of this audit, the minimum expectation is for agencies to ensure that they include details to facilitate access to the information. For example, a link, details of the business unit, or an email address that members of the public should contact if they wished to access the information referenced in the disclosure log. However, it was observed that the agencies that demonstrated better practice included the contact details (e.g. phone and email) of the relevant information access officer in their disclosure logs. This allowed for a more streamlined process for members of the public to request the information from the relevant area within the agency.

Figure 10 illustrates the compliance rates with this measure by agency type.

Comments, findings and recommendations

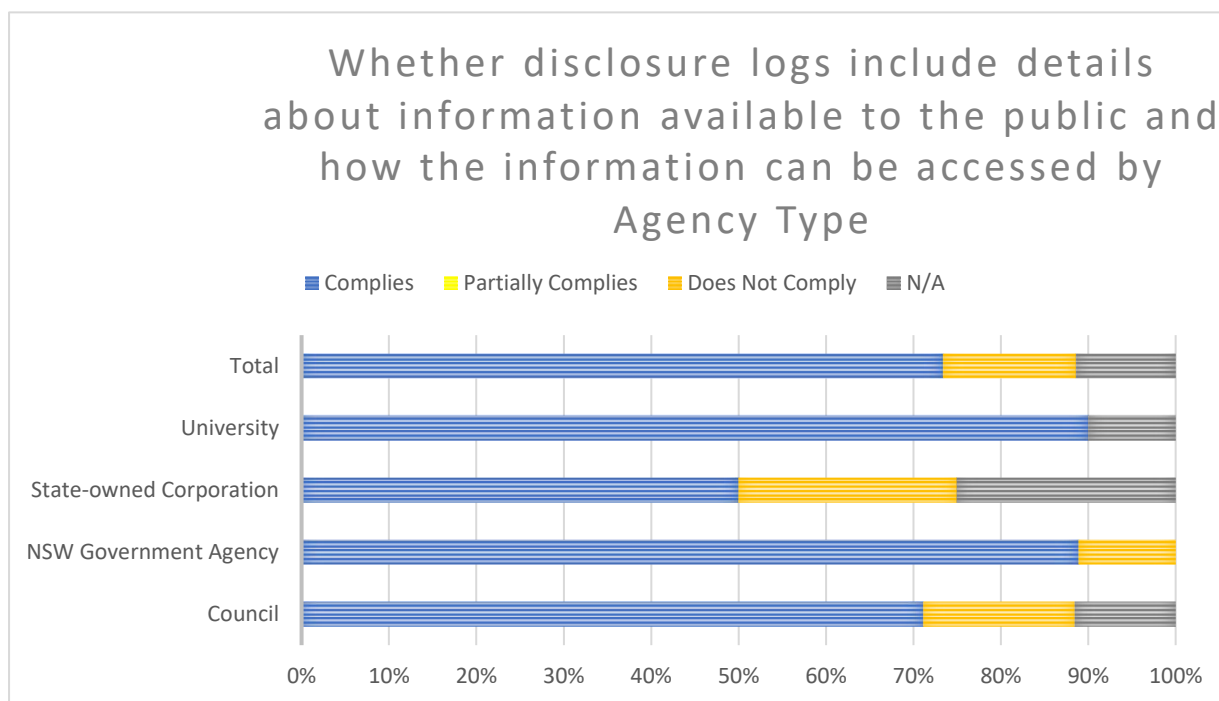


Figure 10. Compliance rates by agency type – whether disclosure logs include details about information available to the public and how the information can be accessed

When the results are arranged by agency type, the Universities and NSW Government Agencies had the highest percentage of compliance, at or near 90%. It was observed that State-owned Corporations were the least compliant at approximately 50%.

Recommendation 4: Agencies should ensure that information can be either downloaded via a link provided against each entry in the disclosure log or the disclosure log includes a statement explaining how the information can be accessed, including contact details for the relevant information access officer or team.

4.4 Whether disclosure logs are current

Criterion		Result
4	Currency of the record	It was apparent that many agencies had not ensured that their disclosure logs were updated on a regular basis
4(a)	Does the record indicate that the disclosure log has been updated in the past 12 months?	57% (45) of agencies were fully compliant 34% (27) of agencies were non-compliant 9% (7) of agencies could not be assessed on this criterion, as they had not made their disclosure logs publicly available

Comments, findings and recommendations
<p>Comments:</p> <p>The audit considered whether agencies had kept their disclosure logs current. Compliance on currency was assessed by examining whether there was any evidence to suggest that the disclosure log had been updated within the past 12 months. Examples that would indicate that the disclosure log had been kept current include whether the agency had published any entries in the disclosure log that recorded an access application decision date within the past 12 months, or whether the agency included a note on their disclosure log indicating that it was last updated on a particular date that is within the past 12 months.</p> <p>Observations:</p> <p>Figure 11 highlights that a significant number of agencies did not appear to have kept their disclosure log current.</p>

Comments, findings and recommendations

The record indicates that the disclosure log has been updated in the past 12 months

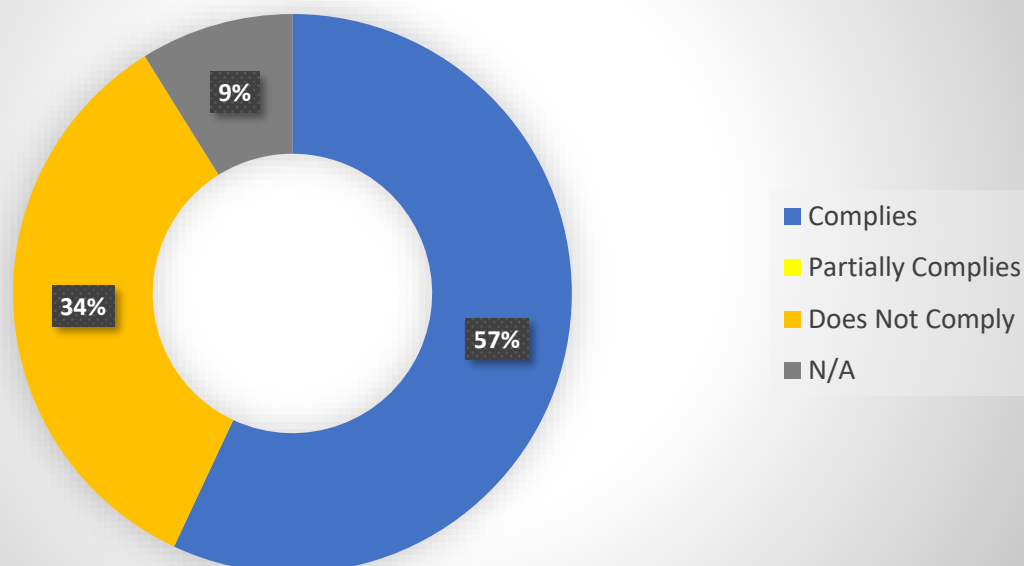


Figure 11. Compliance rates – whether disclosure logs have been updated in the past 12 months

Of the 79 agencies assessed, only 57% (45) of agencies updated their disclosure logs within the past 12 months. The disclosure logs of these agencies either contained entries recording access application decision dates within the past 12 months or referred to a date within the preceding 12 months for which the disclosure log was last updated. Agencies demonstrating stronger compliance with this criterion appeared to regularly update their disclosure logs following each decision made in response to an access application.

Figure 11 indicates that approximately 34% (27) of agencies had not updated their disclosure log within the past 12 months and were therefore assessed as non-compliant with this criterion. It was further observed that many of these agencies had not updated their disclosure logs since 2020, with one agency recording their latest entry in 2013.

The remaining 9% (7) of agencies could not be assessed against this criterion because they did not publish their disclosure logs on their websites.

The maintenance of up-to-date disclosure logs provides an indication that agencies are regularly reviewing the information that they disclose in response to their access applications and considering whether the information might be of interest to other members of the public. It also ensures that members of the public have the option of gaining easy access to current information that may be of relevance to them without the need for them to submit an access application to access to this information. Compliance with this criterion therefore proactively facilitates open government and transparency with respect to government decision-making.

Comments, findings and recommendations

Figure 12 provides a breakdown of the level of compliance with the measure of whether agencies maintained up-to-date disclosure logs based on agency type.

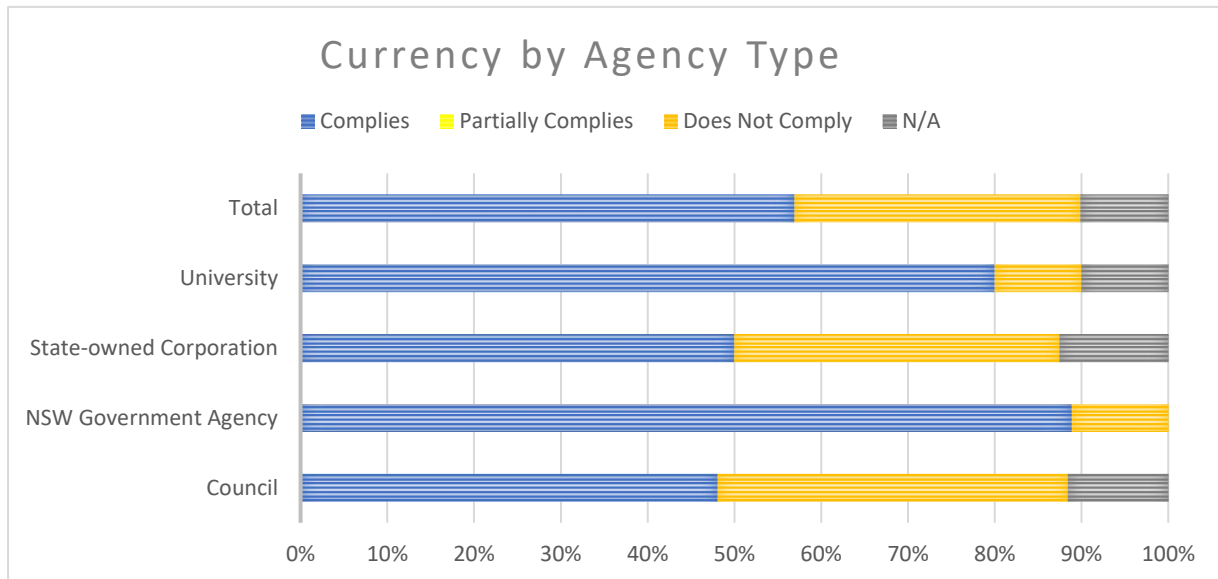


Figure 12. Compliance rates by agency type – whether disclosure logs have been updated in the past 12 months

As illustrated in Figure 12, compliance with this criterion was lowest in the State-owned Corporation and Local Council agency types. Notwithstanding this, it is apparent that all categories of agencies would benefit from implementing measures to ensure that their disclosure logs remain current.

Recommendation 5: Agencies should ensure that they undertake regular review of any information disclosed in response to their access applications and consider whether the information may be of interest to other members of the public. Ideally, agencies should incorporate this review as part of their procedures in dealing with access applications to ensure that the review occurs following the decision of each access application.

Recommendation 6: Agencies should incorporate review of the disclosure log into their mandated review of Agency Information Guides and report that review to the Information Commissioner in accordance with section 22(1) of the GIPA Act.

5. Conclusions

Disclosure logs are important in promoting the objects of the GIPA Act, they assist in ensuring open government, accountability and transparency in accessing information. They also have an impact on the efficiency and effectiveness of the different information access pathways, in particular reducing the burden on the formal access pathway by enabling access to information through proactive release pathway. As such, disclosure logs are an integral part of an agency’s obligations, and the audit examined the compliance of a cross 79 agencies in maintaining these obligations pursuant to section 25 and 26 of the GIPA Act.

The findings of this audit relevantly identified:

- most agencies (91%) were compliant with the essential obligation to make their disclosure log publicly available. A majority of agencies identified as non-compliant were from the Local Council sector (5 of 7 agencies).

- the disclosure log was easily identifiable on most agency websites (83%) and only 9% of agencies were non-compliant.
- a majority of agencies included the date of the decision for each entry (85%), a description of the information to which information was provided in the disclosure log (87%) and details of how to access the information (74%).
- only 57% of agencies were fully compliant in maintaining the currency of the disclosure log.

Overall, it is evident that a majority of agencies are aware of their disclosure log obligations and have implemented a framework to maintain these obligations. Whilst the level of non-compliance in having a disclosure log publicly available is low, it is a significant failing for the non-compliant agencies considering the obligations have been long standing and are a well understood requirement of the GIPA Act. These non-compliant agencies should take swift action to address their obligations.

Further, the low level of compliance in ensuring the currency of disclosure logs is concerning and agencies should prioritise compliance action. By ensuring the currency of their disclosure logs, agencies demonstrate their commitment to the proactive release pathway, facilitating access to information without the requirement to submit a formal access application and thus reducing the burden on agency resources. Disclosure logs have many benefits and are an effective tool in promoting open government and transparency in accessing information.

The report recognises the importance of disclosure logs and provides guidance on actions that can be taken to uplift compliance. The guidance contained in this report is both practical and pragmatic and will assist agencies in improving compliance with their obligations. In particular, it is imperative that disclosure logs are published in an obvious or prominent location on agency websites, otherwise the purpose of keeping a disclosure log would be redundant. Further, a disclosure log is ineffective where it does not contain a proper description or information on how to request access to the information.

Finally, noting section 25 of the GIPA Act provides a discretion to agencies to determine whether information would be of interest to other members of the public, agencies are encouraged to adopt an approach consistent with the intention of the NSW Parliament manifesting in the duties imposed under the object of the GIPA Act:

Section 3(2) It is the intention of Parliament—

- (a) that this Act be interpreted and applied so as to further the object of this Act, and
- (b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.

Having regard to the purpose and benefits of making information available on disclosure logs in general, it is likely that the proactive disclosure of government information through disclosure logs will assist in reducing the number of access applications made to the agency for information that had previously been disclosed.

6. Recommendations

This report makes a number of recommendations to assist agencies to improve compliance with their disclosure log obligations under the GIPA Act.

These recommendations have been set out in the table below.

Recommendations	
Recommendation 1	Agencies should ensure that they comply with the open access obligation to keep a disclosure log, and to ensure that the disclosure log is published on their website.
Recommendation 2	Agencies should ensure that their disclosure logs are easily and prominently located on their 'Access to Information' webpage.
Recommendation 3	Agencies should ensure that their disclosure log complies with section 26(1)(a) of the GIPA Act by recording the dates the relevant access applications were decided for each entry in their disclosure log.
Recommendation 4	Agencies should ensure that information can be either downloaded via a link provided against each entry in the disclosure log or the disclosure log includes a statement explaining how the information can be accessed, including contact details for the relevant information access officer or team.
Recommendation 5	Agencies should ensure that they undertake regular review of any information disclosed in response to their access applications and consider whether the information may be of interest to other members of the public. Ideally, agencies should incorporate this review as part of their procedures in dealing with access applications to ensure that the review occurs following the decision of each access application.
Recommendation 6	Agencies should incorporate review of the disclosure log into their mandated review of Agency Information Guides and report that review to the Information Commissioner in accordance with s22(1) of the GIPA Act.

7. Monitoring

The IPC will continue to monitor the compliance by agencies with respect to their disclosure log obligations and assist agencies to implement the recommendations in this report.

8. Audit chronology

Date	Event
Mid-October 2023	Desktop audit undertaken
Mid-October 2023 – December 2023	Assessment of audit findings and report drafting
12 January 2024	Report provided to Minister for Local Government and to the Office of Local Government
12 January 2024	Final report published

9. Abbreviations

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

Acronyms or abbreviation	Explanation
Agencies	NSW agencies
Disclosure log	A record that each NSW agency maintains, which documents information that it releases in response to access applications, and which may be of interest to other members of the public.
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

10. Legislation

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

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

- Part 1 – Preliminary
 - Section 3 - Object of the Act
- Part 2 – Open government information – general principles
 - Section 6 – Mandatory proactive release of certain government information
 - Section 15 -Principles that apply to public interest determination
 - Section 17 – Role of the Information Commissioner
 - Section 20 – Agencies must have agency information guide
 - Section 21 – Adoption and review of agency information guide
 - Section 22 – Role of Information Commissioner
- Part 3 – Open access information
 - Section 25 – Requirement for disclosure log
 - Section 26 – Required information about access applications

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

- Section 21 – Investigation of agency systems, policies and practices
- Section 23 – Procedure for investigations
- Section 24 – Report on compliance with an Information Act
- Section 33 – Commissioner may furnish information to agency