



information  
and privacy  
commission  
new south wales

# Agency compliance with requirements under section 6(5) of the *Government Information (Public Access) Act 2009* – GIPA Compliance Report

January 2024

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## 1. Executive summary

One of the primary objects of the *Government Information (Public Access) Act 2009* (GIPA Act) is to provide access to open government information to the public by authorising and encouraging the proactive public release of government information by NSW agencies (agencies). This occurs by 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 (OPIAD).<sup>1</sup>

Section 6(2) of the GIPA Act mandates the publication of open access information on an agency's website unless to do so would impose unreasonable additional costs on the agency. In prescribing open access information that is available to members of the public free of charge, the GIPA Act promotes a participative democracy and serves a pro-integrity purpose of accountable and transparent government.<sup>2</sup>

Where an agency decides to withhold open access information, it is required to keep a record setting out details pertaining to the general nature of the information concerned.<sup>3</sup> The requirement to report upon open access information that is withheld by agencies is an important one. This feature of the GIPA Act provides an accountability measure that promotes the object of the GIPA Act.<sup>4</sup> In practice it operates to provide a transparent record of an agency's decision to withhold what has been prescribed as open access information. It also reflects the importance the NSW Parliament placed upon authorising and encouraging the proactive release of information.<sup>5</sup>

A section 6(5) record functions similarly to the disclosure log requirements of the GIPA Act<sup>6</sup> which mandates the reporting of information that has been made available to an applicant that might be important to citizens more broadly. However, it operates in the context of mandatory, not discretionary, disclosure. Therefore, any exception to this mandate must be accounted for by the decision-maker.

To assess whether agencies are broadly complying with the requirement to maintain a record in accordance with section 6(5), the websites of a representative sample of 79 agencies across four sectors were examined to ascertain whether agencies were publishing their section 6(5) records and complying with the requirements with respect to those records. The findings of this audit indicate widespread non-compliance by agencies across all sectors. Additionally, the audit found that there were significant failures across all sectors with respect to the requirement to ensure that records under section 6(5) are current.

The level and breadth of non-compliance with the requirement to maintain records under section 6(5) of the GIPA Act demands immediate action to arrest these longstanding failures.

The findings of this audit may be summarised as follows:

- 28% (22) of agencies had published their section 6(5) records on their respective websites
- 27% (21) of agencies maintained section 6(5) records that were easily located on the agency's websites

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<sup>1</sup> *Government Information (Public Access) Act 2009* ('GIPA Act') s 3(1)

<sup>2</sup> *ibid*

<sup>3</sup> GIPA Act s 6(5)

<sup>4</sup> GIPA Act s 3

<sup>5</sup> GIPA Act s 3(1)(a)

<sup>6</sup> GIPA Act s 25

- 21% (17) of agencies included details on their section 6(5) records about the general nature of the open access information that had been withheld
- 19% (15) of agencies included details on their section 6(5) records about the overriding public interest considerations against disclosure (OPIAD(s)) relied upon to withhold open access information
- only 6% (5) of agencies had updated their section 6(5) record in the past 12 months.

Additionally, the findings indicate that in at least 10% (8) of agencies, their advice to members of the public is either misconceived or incorrect. This is because those agencies included a notation on their website that they did **not withhold** any open access information and therefore did not maintain a record in accordance with section 6(5) of the GIPA Act.

However, when the open access information (comprising class 3 contracts and returns of interests of councillors, designated persons and delegates) of these agencies were examined, it was found that these agencies either did not publish all of the open access required to be made publicly available or had made redactions in the open access information that was published on their websites. It is therefore apparent that these agencies had withheld open access information and were not compliant with their obligation to maintain a record in accordance with section 6(5).

The results of this audit found that the non-compliant agencies were predominantly within the Local Government sector. That sector has received extensive engagement and direct regulatory support from the Information and Privacy Commission (IPC). Accordingly, the Information Commissioner will refer the issues of non-compliance within the Local Government sector to the Office of Local Government in accordance with section 33 of the *Government Information (information Commissioner) Act 2009*.

The findings of this audit are concerning and indicate widespread compliance failures with the long-standing open access obligations mandated by section 6(5) of the GIPA Act across all agency sectors. Further timely action by agencies is required to achieve compliance. The guidance and recommendations provided in this Report should inform prompt and comprehensive agency action.

Given the low levels of compliance, the results of this report will be communicated to agencies. Additionally, the findings will inform the development of the Information Commissioner's proactive regulatory program.

## 2. Background and purpose of the audit

Section 6 of the GIPA Act establishes the mandatory proactive release of certain government information, with section 6(5) specifically requiring that an agency must keep a record of the open access information that it does not make publicly available on the basis of an OPIAD. The record is to indicate only the general nature of the information concerned.

The absence of a properly constructed record under section 6(5) of the GIPA Act has the potential to undermine the mandatory open access provisions of the GIPA Act and in turn limit the effectiveness of other open access pathways such as informal release of government information (section 8 of the GIPA Act). This is because the purpose of a record under section 6(5) is to enhance transparency with respect to open access information that would otherwise be disclosed but for an OPIAD. By maintaining a section 6(5) record and ensuring its accuracy, agencies can assist the public in better understanding the types of information that have not been made available and the reasons as to why it has been withheld. It is therefore imperative that agencies understand the requirements of section 6(5) of the GIPA Act and establish effective governance frameworks to ensure compliance with these obligations.

The interdependency of a record created under section 6(5) of the GIPA Act and governance particularly in the Local Government sector was explored in the IPC's 2021 and 2023 Local Government Sector – GIPA Compliance Reports.

In July 2021, the IPC published the [Local Government Sector - Compliance Report](#) (the 2021 LG Compliance Report) following a compliance audit of 52 councils across NSW. The compliance audit examined and considered:

1. the level of compliance with the [Information Commissioner's Guideline 1: For Local Councils on the disclosure of information \(returns disclosing the interest of councillors and designated persons\)](#);
2. whether councils are making information about the interests of councillors and designated persons available as open access information; and
3. whether councils have adequate systems, processes and governance frameworks in place to manage the requirements relating to the disclosure of interests about councillors and designated persons.

One of the key assessment criteria examined in the 2021 LG Compliance Report was Local Government sector's compliance with section 6(5) of the GIPA Act. The IPC found only two councils were fully compliant with the requirement to include a record of redacted information on the council's website in accordance with section 6(5) of the GIPA Act. Most councils (47 of 52) failed to comply with this requirement. Failure to comply with section 6(5) of the GIPA Act provides evidence of immature or inadequate systems, policies and practices to support overall compliance with open access requirements.

To assist the Local Government sector achieve and elevate its compliance with the GIPA Act, the 2021 LG Compliance Report made eight formal recommendations, including:

**Recommendation 6** that *Councils should maintain a central record of all open access information that has been withheld due to an overriding public interest against disclosure and embed policies and procedures to ensure compliance with section 6(5) of the GIPA Act.*

In June 2023, the IPC published its [Local Government Sector – Follow-up GIPA Compliance Report](#) (the 2023 LG Compliance Report). The 2023 LG Compliance Report examined the same 52 councils across NSW to assess compliance with the open access requirements of the GIPA Act and determine whether the recommendations made in the 2021 LG Compliance Report had been adopted by the sector. One of the assessment criteria focused exclusively on the existence of section 6(5) records in line with **Recommendation 6** of the 2021 LG Compliance Report.

Of the 52 councils audited, 36 councils that were previously assessed as non-compliant in 2021 remained non-compliant with the requirements of section 6(5) of the GIPA Act in 2023, demonstrating an apparent lack of understanding or willingness within local government regarding their duty to maintain compliant records under section 6(5) of the GIPA Act.

Based on the low levels of compliance identified during the audit, the 2023 LG Compliance Report made two specific recommendations regarding the operation of section 6(5):

**Recommendation 7**, that *Councils should ensure that section 6(5) records are published on their website and updated on a regular basis. In circumstances where information is redacted from the returns, councils should ensure that this is accurately reflected in the section 6(5) record.*

**Recommendation 8**, that *the IPC commits to the development of guidance to assist councils in their compliance with section 6(5) of the GIPA Act.*

Within the 2023 LG Compliance Report, the IPC indicated its intent to undertake further regulatory work specifically with respect to agencies' compliance with section 6(5) of the GIPA Act. The purpose of this proactive compliance report is to:

1. examine compliance across four sectors with the requirements of section 6(5) of the GIPA Act

2. provide further oversight and sector comparison of local government’s compliance with section 6(5) of the GIPA Act, and
3. to report on council’s adoption of the recommendations made in the IPC’s 2021 and 2023 LG Compliance Reports, and
4. make further recommendations to improve and support broader sector compliance.

## 2.1 Assessment criteria

This audit examined and considered the following recommendations and assessment criteria:

Recommendations of relevance arising from the 2021 and 2023 LG Compliance Reports	
<b>Recommendation 6</b> (2021 Compliance Report)	Councils should maintain a central record of all open access information that has been withheld due to an overriding public interest against disclosure and embed policies and procedures to ensure compliance with section 6(5) of the GIPA Act.
<b>Recommendation 7</b> (2023 Compliance Report)	Councils should ensure that section 6(5) records are published on their website and updated on a regular basis. In circumstances where information is redacted from the returns, councils should ensure that this is accurately reflected in the section 6(5) record.

Table 1. Recommendations of relevance arising from the 2021 and 2023 LG Compliance Reports

Assessment Criteria	
<b>Existence of the record</b> <sup>7</sup>	Is the section 6(5) record publicly available?
<b>Accessibility of the record</b> <sup>8</sup>	Is the section 6(5) record easily located on the Agency’s website?
<b>Form of the record</b> <sup>9</sup>	Does the section 6(5) record include details about the general nature of the information? Does the section 6(5) record include details about the OPIAD considerations relied upon to withhold open access information?
<b>Currency of the record</b> <sup>10</sup>	Does the section 6(5) record indicate that the record has been updated in the past 12 months?

Table 2. Assessment criteria

<sup>7</sup> GIPA Act s 6(5)

<sup>8</sup> ibid

<sup>9</sup> ibid

<sup>10</sup> GIPA Act s 18(f)

### 3. Methodology and sample selection

In ascertaining the rates of compliance by agencies with respect to the requirement to maintain a record under section 6(5) of the GIPA Act, it was necessary to undertake a broader assessment based on the proportion of the randomly selected agencies that had made their section 6(5) record publicly available on their website.

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 3 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 <sup>11</sup>	9
State-owned Corporations	8
Universities	10
<b>Total</b>	<b>79</b>

Table 3. 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
- the non-inquisitorial nature of the audit, which precludes the seeking of clarification from the selected agencies in relation to the data, and

<sup>11</sup> The NSW Government agencies assessed were limited to the Departments listed in Schedule 1 of the *Government Sector Employment Act 2013* (NSW)

- the focus of the audit is limited to an assessment as to the existence, accessibility, form and currency of section 6(5) records.

Further, given its non-inquisitorial nature, this desktop audit does not assess the completeness or accuracy of the information contained in the section 6(5) records.

During the course of this desktop audit, it was identified that some agencies had not made their section 6(5) record 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 2.

Similarly, some agencies had published a document to reference section 6(5) on their websites, but the record was essentially blank and did not contain any entries. These agencies could not be assessed with respect to the criteria concerning 'Form of the record' as set out in Table 2.

### 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 record complying with section 6(5) was available
- the ease in which the section 6(5) record could be located
- whether the section 6(5) record includes details about the general nature of the information withheld
- whether the section 6(5) record includes details of the OPIAD that the agency relied upon to withhold open access information, and
- whether it appears that the section 6(5) record 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 2.
- specific comments, findings and recommendations to assist agencies in complying with legislated requirements concerning section 6(5) records.

Where an agency was assessed as non-compliant with respect to the legislative requirement to make their section 6(5) records 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 section 6(5) record.

## 4. Observations and findings

### 4.1 Whether agencies have a section 6(5) record and have made the record publicly available

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.

Criterion		Result
1	<b>Existence of the record</b>	A significantly high proportion of agencies did not comply with the requirement to make their section 6(5) record publicly available
1(a)	Is the section 6(5) record publicly available?	28% (22) of agencies were fully compliant 72% (57) of agencies were non-compliant



## Comments, findings and recommendations

### Comments:

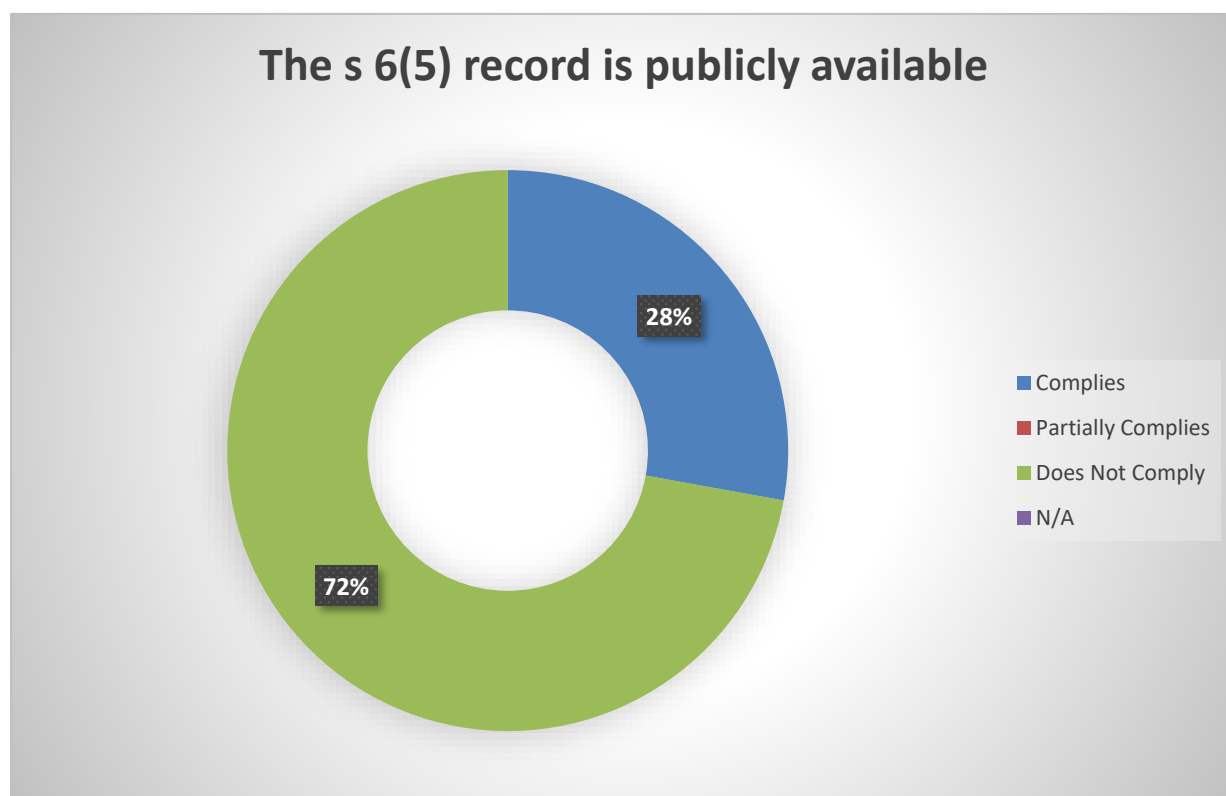
As a category of open access information, a section 6(5) record of open access information withheld must be publicly available on each agency's website (section 6(2) of the GIPA Act).

The obligation to publish a record of decisions made to restrict access to open access information promotes transparency and accountability in respect of agency public interest determination and is complementary to the function of other open access obligations.

Failure to publish a record of open access information that has been withheld diminishes public confidence in an agency's compliance with its open access obligations and the objects of the GIPA Act more broadly.

### Observations:

Figure 1 illustrates that most agencies are not compliant with the obligation to publish a section 6(5) record.



*Figure 1. Compliance rates – whether a record is publicly available*

The audit identified that of the 79 agencies assessed, only 28% (22) of agencies complied with the requirement to ensure their section 6(5) record was publicly available.

Disappointingly, the section 6(5) records of 72% (57) of agencies could not be located. Accordingly, these agencies were found to be non-compliant with this criterion.

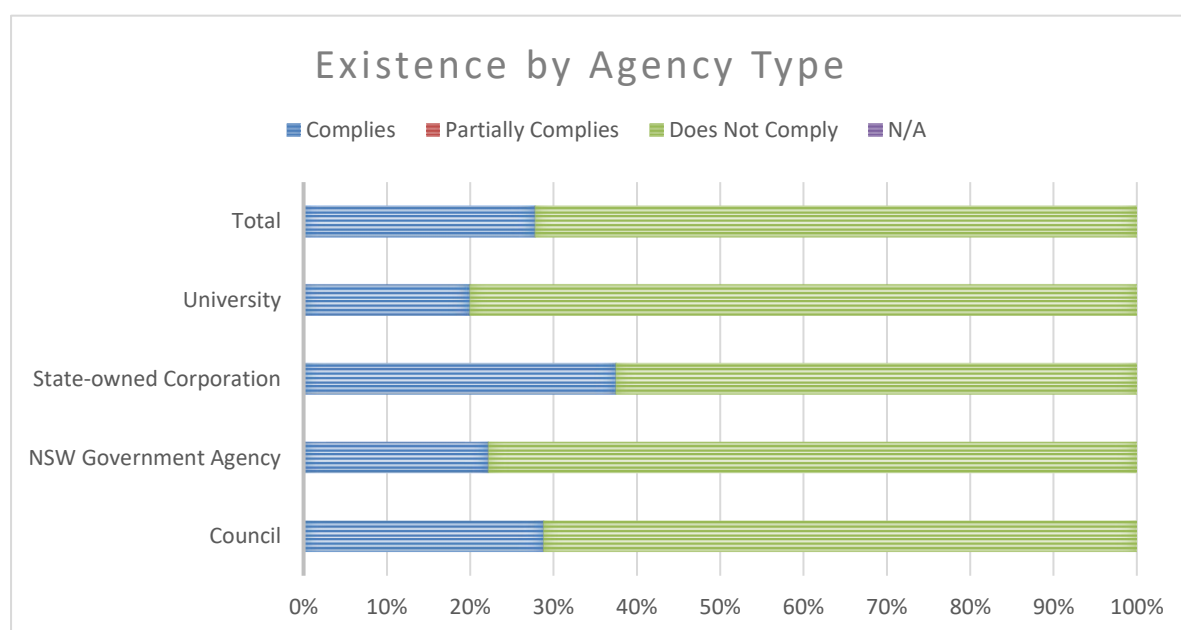
It was observed that approximately 10% (8) of agencies had included a notation on their website that they did not withhold any open access information and therefore did not maintain a record in accordance with section 6(5) of the GIPA Act.

### Comments, findings and recommendations

However, when the open access information (comprising class 3 contracts and returns of interests of councillors, designated persons and delegates) of these agencies was examined, it was found that these agencies either did not publish all of the open access required to be made publicly available, or had made redactions to the open access information. It is therefore apparent that these agencies had withheld open access information, but failed to maintain a record in accordance with section 6(5).

Accordingly, these agencies were assessed as non-compliant for the purposes of this criterion. Significantly these agencies were predominantly representative of the Local Government sector.

Significant levels of non-compliance with the obligation were consistent across all sectors. This fact is evident when the data is observed in Figure 2.



*Figure 2. Compliance rates by agency type – Whether section 6(5) records are published on agencies' websites*

The low levels of compliance across all sectors are not satisfactory and must improve. From a cost benefit perspective, the section 6(5) obligation benefits the public in providing information and insight about the handling of important government information. Compliance with the obligation is unlikely to impose a material resource burden on agencies because the actions required to effectively achieve and maintain compliance are minimal.

**Recommendation 1:** Agencies should ensure that they are compliant with the obligation to publish their disclosure log on their website within 4 months of the date of this report.

**Recommendation 2:** Agencies should evaluate their compliance with the section 6(5) obligation every 12 months.

**Recommendation 3:** The IPC will commit to developing and promoting resources which provide further guidance on the requirement under section 6(5) to increase awareness of agency obligations.

## 4.2 Accessibility of the section 6(5) records

Criterion		Result
<b>2</b>	<b>Accessibility of the record</b>	The section 6(5) records of a significantly high number of agencies could not be located on their websites.
2(a)	Is the section 6(5) record easily located on the agency's website?	27% (21) of agencies were fully compliant 1% (1) of agencies were partially compliant 72% (57) of agencies were non-compliant

### Comments, findings and recommendations

#### Comments:

As noted above, the primary purpose of maintaining a section 6(5) record is to allow the public to understand the nature of any open access information that has been withheld by an agency due to an OPIAD. Given the importance of upholding citizens' rights to open access information as prescribed by the GIPA Act, it is necessary for agencies to ensure that if open access information is withheld, the public is adequately informed of the nature of the information withheld and the basis on which it has been withheld. Accordingly, improving accessibility of this information assists in promoting open government and transparency.

Compliance with the accessibility criterion was assessed on whether the section 6(5) record would be easily located by navigating from the agency's home page with minimum clicks and in a straightforward manner.

#### Observations:

Figure 3 illustrates the overwhelming proportion of agencies whose section 6(5) record could not be located on their websites, or the agencies whose section 6(5) record required considerable effort to locate.

## Comments, findings and recommendations

## The s 6(5) record is easily located on the website

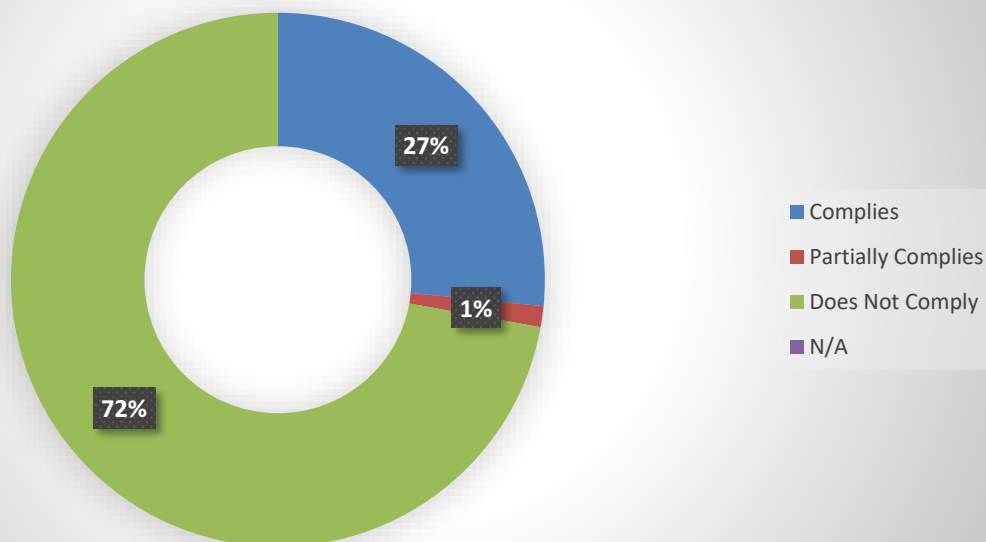


Figure 3. Compliance rates – whether the section 6(5) records are easily located on agencies' websites

Figure 3 illustrates that of the 79 agencies assessed, only 27% (21) of agencies had fully complied with the requirement to make their section 6(5) record readily accessible. Generally, these agencies had published their section 6(5) records prominently on their websites in a logical location such as the 'Access to Information' section.

Approximately 1% (1) of agencies were assessed as partially compliant with the requirement to ensure that their section 6(5) record were easily accessible. The section 6(5) record for this agency was published in the 'Policies' section of the agency's website, rather than the 'Access to Information' section. Given the location of the record, it is unlikely that a general member of the public would have been able to locate the section 6(5) record without considerable effort.

The remaining 72% (57) of agencies did not make their section 6(5) record publicly available. Accordingly, these agencies were assessed as non-compliant with this criterion.

Figure 4 provides a breakdown of the level of compliance with the measure of whether the section 6(5) records are easily accessible based on agency type.

Comments, findings and recommendations

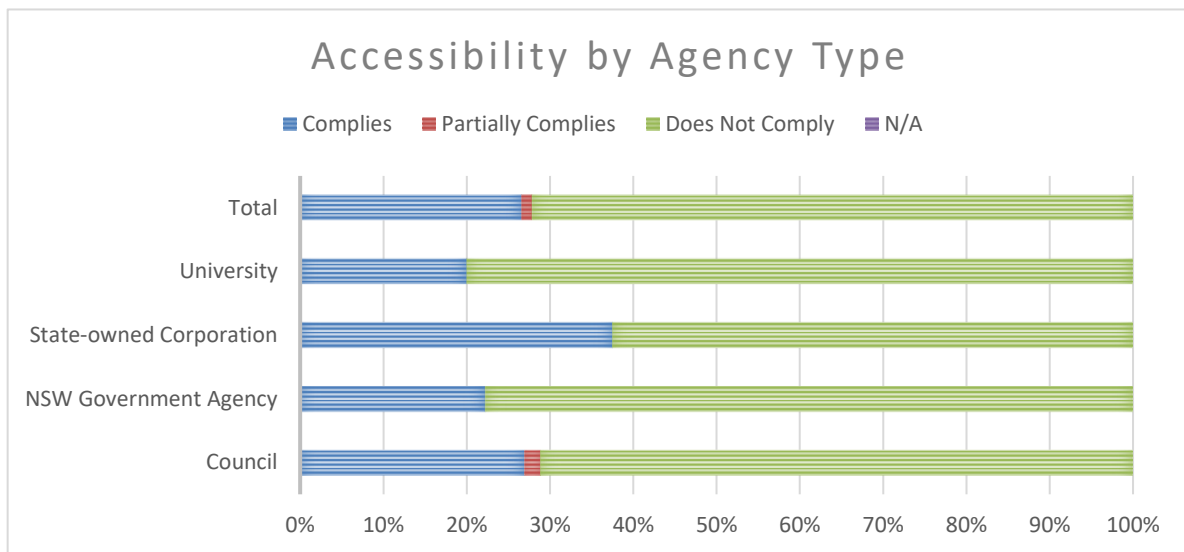


Figure 4. Compliance rates by agency type – whether section 6(5) records are easily located on agencies’ websites

Figure 4 illustrates the low levels of compliance across all sectors.

**Recommendation 4:** Agencies must ensure that their section 6(5) records are published in a prominent location on their ‘Access to Information’ webpage.

### 4.3 Whether the section 6(5) records contain required information under the GIPA Act

Criterion		Result
3	<b>Form of the record</b>	It was observed that agencies generally demonstrated low levels of compliance with the requirement to include details about the general nature of open access information withheld and the OPIAD(s) relied upon by the respective agencies
3(a)	Does the section 6(5) record include details about the general nature of the information?	21% (17) of agencies were fully compliant 3% (2) of agencies were non-compliant 76% (60) of agencies could not be assessed on this criterion, as they either: <ul style="list-style-type: none"> <li>did not have a section 6(5) record available on their websites, or</li> <li>published a section 6(5) record absent any entries in the record</li> </ul>
3(b)	Does the section 6(5) record include details about the OPIAD consideration(s) relied upon to withhold open access information?	19% (15) of agencies were fully compliant 2.5% (2) of agencies were partially compliant 2.5% (2) of agencies were non-compliant 76% (60) of agencies could not be assessed on this criterion, as they either: <ul style="list-style-type: none"> <li>did not have a section 6(5) record available on their websites, or</li> <li>published a section 6(5) record absent any entries in the record</li> </ul>

#### Comments, findings and recommendations

Section 6(5) of the GIPA Act requires agencies to indicate the general nature of any open access information withheld due to an OPIAD. This may include information concerning:

- the type of document
- the name of the document
- a general description of the document
- any reasons for non-disclosure (including any OPIAD(s) that have been applied to the document)
- the area responsible for the document, and
- the contact information of the Right to Information Officer within the agency.

## Comments, findings and recommendations

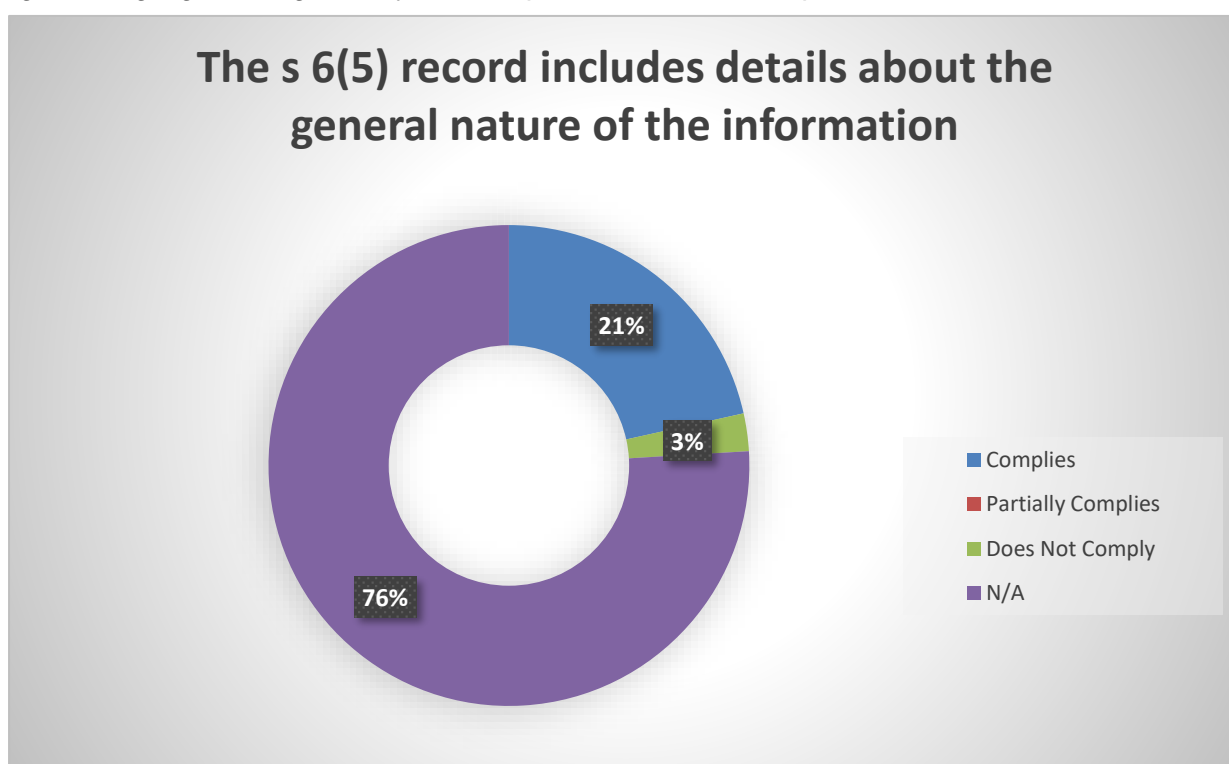
**4.3(a) Does the section 6(5) record include details about the general nature of the information?****Comments:**

Part of this criterion considered whether the section 6(5) records included details about the general nature of the information.

Accordingly, compliance with this measure was assessed based on whether the entries in the section 6(5) records contained a description or any details about the open access information withheld by the agency.

**Observations:**

Figure 5 highlights the generally low compliance rates with respect to this measure.



*Figure 5: Compliance rates – whether section 6(5) records include details about the general nature of the information*

As illustrated in Figure 5, 21% (17) of agencies included some details about the general nature of the open access information that had been withheld. Examples of general descriptions include personal information such as ‘residential addresses of individuals’, and commercial information such as ‘leases and licences’.

Approximately 3% (2) of agencies provided vague and non-specific descriptions of the open access information that has been withheld. For example, one agency described the information withheld as ‘library collection’. This description is ambiguous and does not allow a member of the public to appreciate the nature of the information that has been withheld. On this basis, the agencies that provided a vague or non-specific description of the open access information in their section 6(5) records were assessed as non-compliant. Better practice would see agencies refer to a specific document and provide a general description of the information withheld.

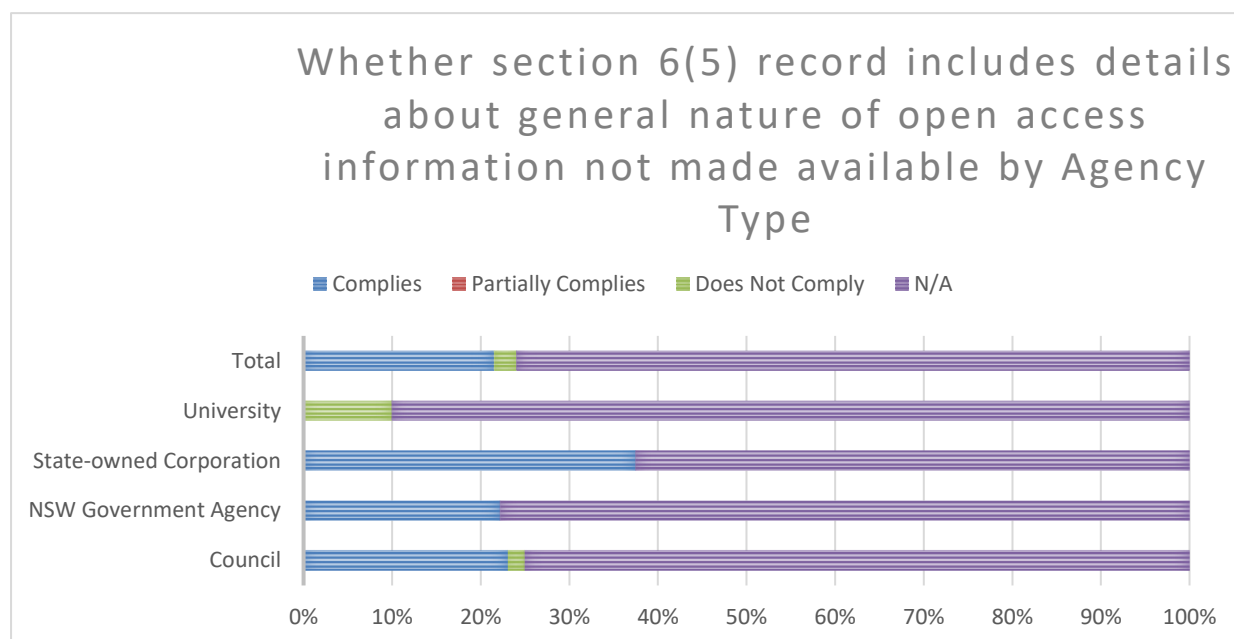
## Comments, findings and recommendations

The remaining 76% (60) of agencies could not be assessed, as they either:

- did not have a section 6(5) record available on their website and had not provided any explanation as to why the record was absent, or
- had a section 6(5) record available on their website, but the record did not contain any entries.

It was further observed that some agencies had published open access information on their websites which contained redactions to various parts of the documents due to an OPIAD. These agencies have withheld access to open access information and should specify in their section 6(5) record the general nature of the information that has been withheld.

Figure 6 provides a breakdown of the levels of compliance with the measure of whether the section 6(5) records included details about the general nature of the open access information that had been withheld.



*Figure 6. Compliance rates by agency type – whether section 6(5) records include details about the general nature of the information*

Figure 6 is reflective of the high number of agencies that had not made their section 6(5) record publicly available and demonstrates a low compliance rate with the requirements of section 6(5) in totality.

**Recommendation 5:** Where an agency withholds open access information (including parts of open access documents), the agency must ensure that it records a description of the general nature of the information in its section 6(5) record.

### **4.3(b) Does the section 6(5) record include details about the OPIAD consideration(s) relied upon to withhold open access information?**

#### **Comments:**

The section 6(5) record should include details of the reason for non-disclosure of the open access information, that is, the public interest consideration against disclosure that resulted in there being an OPIAD.



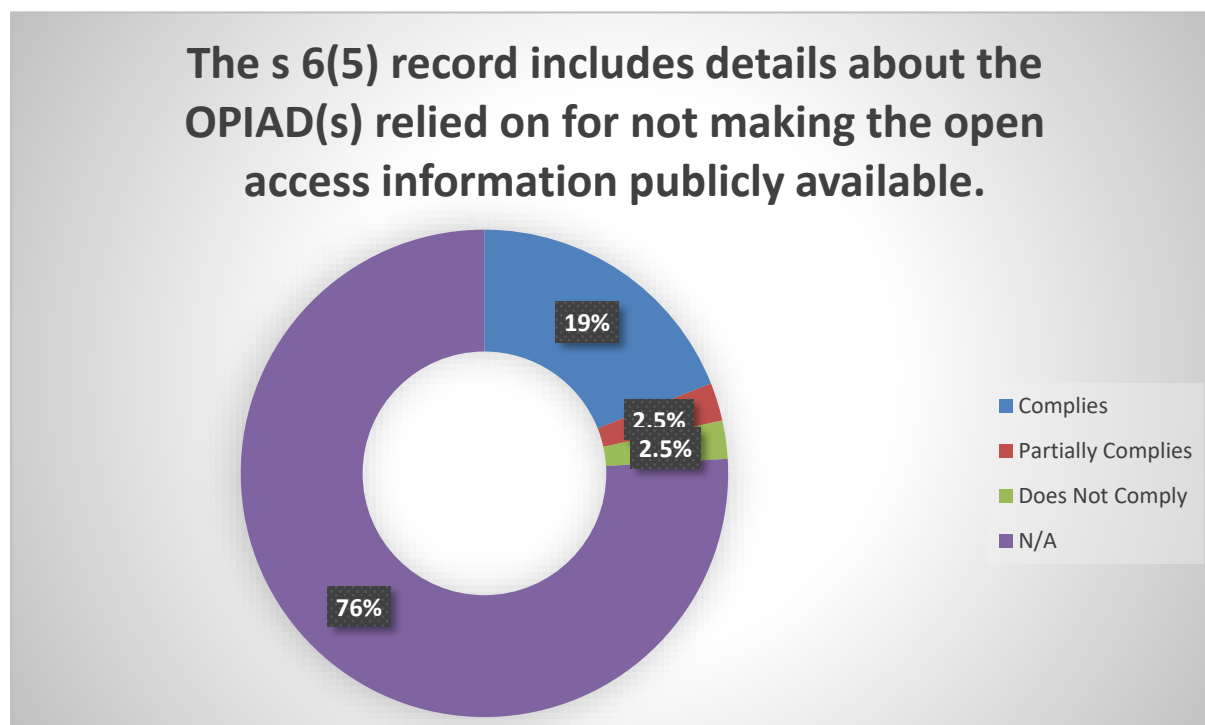
### Comments, findings and recommendations

The public interest considerations against disclosure that may be taken into account in determining whether there is an OPIAD are listed in the Table at section 14 of the GIPA Act.

The section 6(5) record was considered to be fully compliant where it sets out or lists the OPIAD(s) relied upon to withhold open access information. A record is partially compliant where it provides a general reason (as opposed to specific reference to the OPIADs or at a minimum, words to the effect of the relevant OPIAD) for not making the open access information publicly available. A non-complying record does not contain any details of the OPIAD(s) relied upon to withhold open access information.

#### Observations:

Figure 7 illustrates the levels of compliance with the requirement for agencies to include details in their section 6(5) records about the OPIAD(s) relied upon to withhold open access information.



*Figure 7. Compliance rates – whether section 6(5) records include details about the OPIAD(s) relied upon to withhold open access information*

Figure 7 demonstrates that only 19% (15) of the agencies were fully compliant and a further 2.5% (2) of agencies were partially compliant with the measure pertaining to the inclusion of details about the OPIAD(s) relied upon to withhold open access information.

Of the agencies that were assessed as partially compliant, the section 6(5) record may have only included a general mention of there being an OPIAD, rather than specific details of the public interest consideration(s) against disclosure resulting in the OPIAD as set out in the Table at section 14 of the GIPA Act.

The section 6(5) records of 2.5% (2) of the agencies did not contain any details concerning the OPIAD(s) relied upon by the respective agencies. These agencies merely noted in their section 6(5) records that open access information has been withheld but did not provide any justification for withholding information. On this basis, these agencies were assessed as non-compliant for the purposes of this measure.

Comments, findings and recommendations

Of the 79 agencies assessed, 76% (60) of agencies did not have a section 6(5) record that was able to be assessed. As discussed above, this is because those agencies did not have a section 6(5) record that was publicly available on their website or there was no open access information that they did not make publicly available on the basis of an OPIAD. Accordingly, these agencies have been assessed as 'N/A' for the purposes of this measure.

Figure 8 sets out the findings in relation to this measure based on agency type.

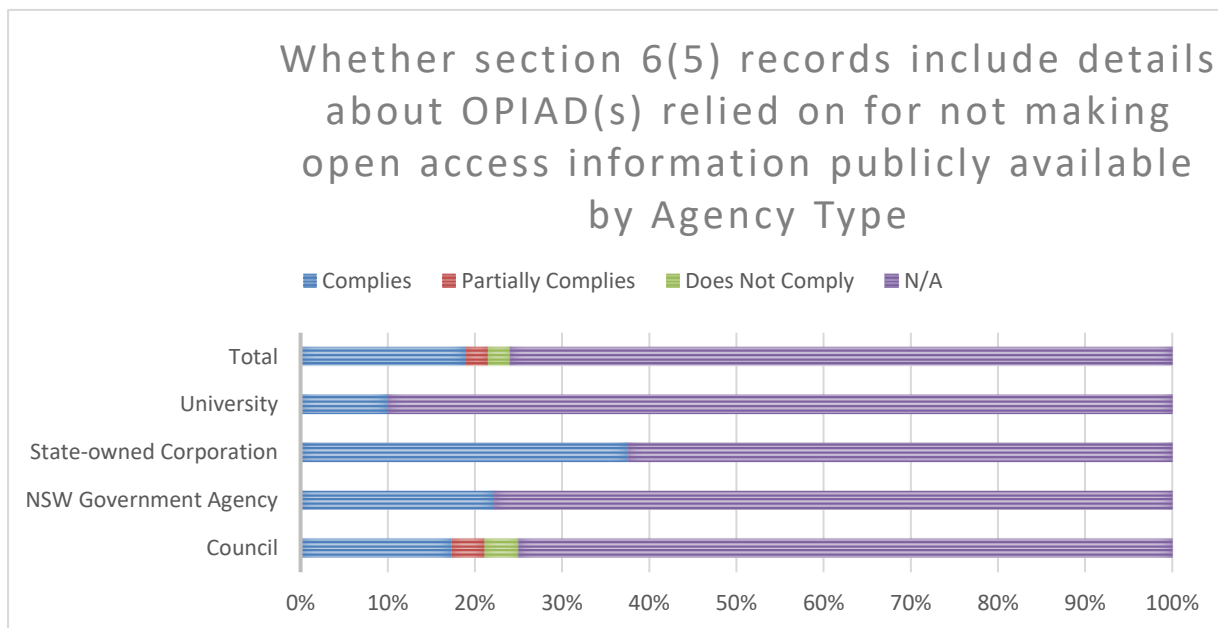


Figure 8. Compliance rates by agency type – whether section 6(5) records include details about the OPIAD(s) relied upon to withhold open access information

When the results are arranged by agency type, it is apparent that the State-owned Corporations had the highest percentage of compliance at close to 40%. The lowest percentage was the Universities at approximately 10%, which may be attributed to the fact that many of the Universities assessed did not have a section 6(5) record that was publicly available and/or able to be assessed.

Where a section 6(5) record was able to be assessed, the only sector demonstrating non-compliance was the Local Government sector.

**Recommendation 6:** Agencies must set out or list in their section 6(5) records the OPIAD(s) relied upon to withhold open access information.

#### 4.4 Whether section 6(5) records are current

Criterion		Result
4	<b>Currency of the record</b>	Only a small proportion of agencies demonstrated that their section 6(5) record was current
4(a)	Does the section 6(5) record indicate that the record has been updated in the past 12 months?	<p>6% (5) of agencies were fully compliant 22% (17) of agencies were non-compliant</p> <ul style="list-style-type: none"> <li>72% (57) of agencies could not be assessed on this criterion, as they did not have a section 6(5) record available on their websites.</li> </ul>

#### Comments, findings and recommendations

##### Comments:

This audit considered whether agencies kept their section 6(5) records current.

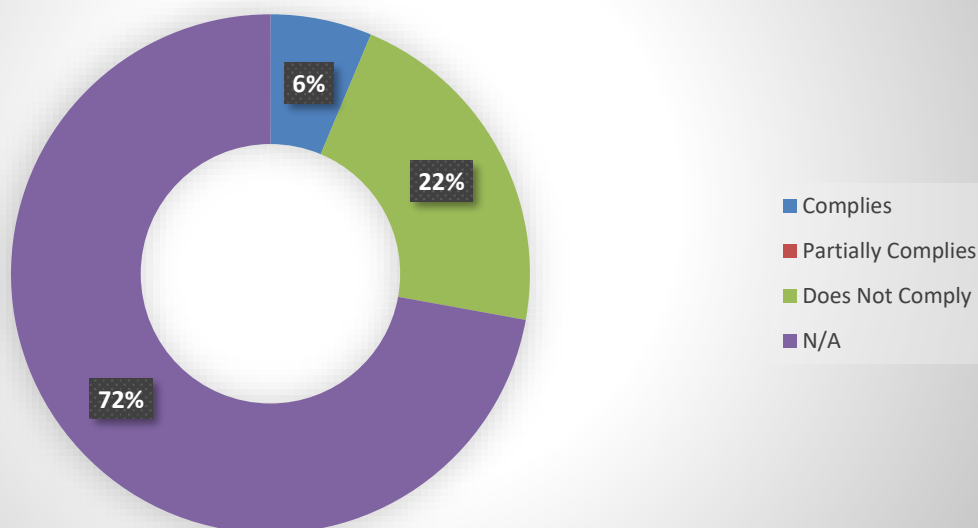
Compliance with this criterion was assessed by examining whether there was any evidence that would indicate that the section 6(5) record had been updated within the past 12 months. This included the existence of any entries in the record that references a date within the past 12 months, or whether there was any notation that the record had been updated on a particular date within the past 12 months.

##### Observations:

Figure 9 illustrates the low numbers of agencies that had updated their section 6(5) record within the past 12 months.

## Comments, findings and recommendations

### The s 6(5) record indicates that the record has been updated in the past 12 months



*Figure 9. Compliance rates – whether section 6(5) records have been updated in the past 12 months*

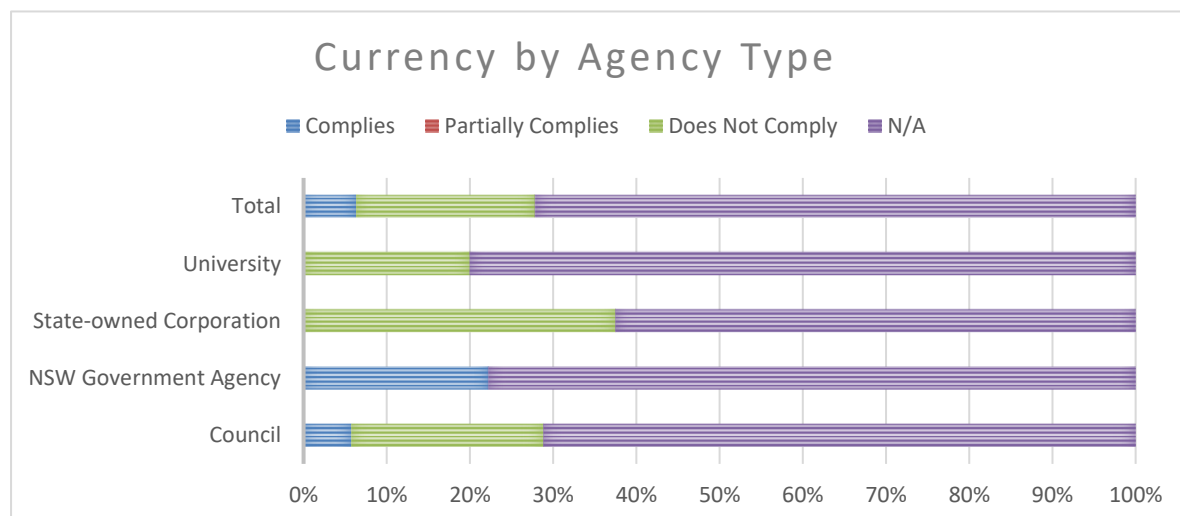
Figure 9 notes that only 6% (5) of agencies had updated their section 6(5) record within the past 12 months. The section 6(5) records of these agencies generally contained entries that were added to the record within the past 12 months or included a note specifying that the record was last updated on a date within the past 12 months.

The section 6(5) records of approximately 22% (17) of agencies did not appear to have been updated within the past 12 months and were therefore assessed as non-compliant with this criterion.

The remaining 72% (57) of agencies could not be assessed against this criterion as they did not have a section 6(5) record available on their website and had not provided any explanation as to why the record was absent.

Figure 10 illustrates the overwhelming levels of non-compliance with the criterion concerning currency of section 6(5) records based on agency type.

## Comments, findings and recommendations



*Figure 10. Compliance rates by agency type – whether section 6(5) records have been updated in the past 12 months*

It is apparent from Figure 10 that agencies across all sectors would benefit from greater uplift in ensuring that a section 6(5) record is publicly available and kept updated on a frequent basis. The Local Government and Government Department sectors demonstrated some level of compliance by individual agencies.

**Recommendation 7:** Agencies must ensure that they review their section 6(5) record on a yearly basis and include a notation on the record as to when it was last updated. Further, where an agency has decided to withhold access to any open access information, it should consider immediately updating the record to include general information about the information that has been withheld in accordance with section 6(5) of the GIPA Act.

## 5. Conclusions

The GIPA Act outlines mandatory proactive release of certain government information at section 6. In particular, section 6(5) specifically requires that an agency must keep a record of the open access information that it does not make publicly available on the basis of an overriding public interest against disclosure. This audit undertook further regulatory work identified as a result of the IPC's 2021 and 2023 LG Compliance Reports with respect to failures to meet open access obligations under section 6(5) of the GIPA Act.

The audit identified low levels of compliance across criteria reviewed, highlighting:

1. Only 28% (22) of agencies made a section 6(5) record available on their website.
2. The section 6(5) record was easily located on only 27% (21) of agency websites.
3. Only 21% (17) of agencies were fully compliant in providing details of the general nature of the information in the section 6(5) record. However, 76% (60) of agencies could not be assessed in this respect.
4. Only 19% (15) of agencies were fully compliant in providing details of the OPIAD(s) relied on in the section 6(5) record. However, 76% (60) of agencies did not have a record that could be assessed.
5. Only 6% (5) of agencies were fully compliant with maintaining the currency of the section 6(5) record. However, 72% (57) of agencies could not be assessed.

The results outline significantly low levels of compliance and indicate a continued lack of awareness of the obligations with respect to a section 6(5) record. Whilst compliance levels for the fully compliant criteria was low for all questions, it is acknowledged that the impact of these results are limited for criterion 3 and 4 as a majority of these agencies could not be assessed as they did not have a section 6(5) record.

Nonetheless, the low levels of compliance for criterion 1 and 2 is particularly concerning considering previous guidance has been provided with respect to section 6(5) records within the 2021 and 2023 LG Compliance Reports. Whilst it is noted the 2021 and 2023 LG Compliance Reports were limited to the Local Government sector, a majority of the agencies subject to the current audit comprised agencies from the Local Government sector. As such, there appears to be a broader indifference towards compliance with this open access requirement by agencies.

As noted throughout the report, the failure to have a section 6(5) record has the potential to undermine the mandatory open access provisions contained in the GIPA Act. Thus, limiting the effectiveness of the open access pathways available to the public. Therefore, it is important that agencies understand the requirements of section 6(5) of the GIPA Act and establish effective governance frameworks to ensure compliance with these obligations.

The audit recognises the significant lack of information made available by agencies regarding their section 6(5) obligations. The low levels of compliance are not satisfactory and significant improvement is required. As outlined above, a section 6(5) record benefits the public in providing information and insight about the handling of important government information, promoting open government and transparency. Further, compliance with the obligation would be unlikely to impose a material resource burden on agencies, with the actions required to effectively achieve and maintain compliance being minimal.

## 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	
<b>Recommendation 1</b>	Agencies should ensure that they are compliant with the obligation to publish their disclosure log on their website within 4 months of the date of this report.
<b>Recommendation 2</b>	Agencies should evaluate their compliance with the section 6(5) obligation every 12 months.
<b>Recommendation 3</b>	The IPC will commit to developing and promoting resources which provide further guidance on the requirement under section 6(5) to increase awareness of agency obligations.
<b>Recommendation 4</b>	Agencies must ensure that their section 6(5) records are published in a prominent location on their 'Access to Information' webpage.
<b>Recommendation 5</b>	Where an agency withholds open access information (including parts of open access documents), the agency must ensure that it records a description of the general nature of the information in its section 6(5) record.
<b>Recommendation 6</b>	Agencies must set out or list in their section 6(5) records the OPIAD(s) relied upon to withhold open access information.

Recommendations	
<b>Recommendation 7</b>	Agencies must ensure that they review their section 6(5) record on a yearly basis and include a notation on the record as to when it was last updated. Further, where an agency has decided to withhold access to any open access information, it should consider immediately updating the record to include general information about the information that has been withheld in accordance with section 6(5) of the GIPA Act.

## 7. Monitoring

The IPC will continue to monitor the compliance by agencies with respect to their obligations under section 6(5) of the GIPA Act 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
Agency	NSW agency
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
OPIAD	Overriding public interest against disclosure
Section 6(5) record	A record that each agency must keep, which documents the open access information that it does not make publicly available on the basis of an overriding public interest against disclosure.

## 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
- Part 3 – Open access information

*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