Commissioner's Overview

In my first Report on the operation of the *Government Information (Public Access) Act 2009* (GIPA Act), I am pleased to present agencies' GIPA data for 2022/23, to highlight some trends suggested by that data, and to report on initiatives by the Information and Privacy Commission (IPC) that support access to government information in New South Wales (NSW).

The Information Commissioner has tabled a Report on the operation of the GIPA Act in the NSW Parliament each year since 2013, consistent with the role of this office in maintaining and enhancing the integrity of public sector administration. This annual report to Parliament is required under section 37 of the *Government Information (Information Commissioner) Act 2009* (GIIC Act).

Another strong year for GIPA applications

Access applications have increased from 12,945 in 2013/14 to 24,476 in this reporting year: an 89% increase and another record. The increase compared to 2021/22 was only 3% but it follows a 37.9% increase recorded between 2019/20 and 2021/22. I note that the reported data for 2022/23 contains limited information for ministers' offices, due to the State election that occurred in March 2023. Although the numbers in respect of ministers' offices are generally small, this issue is referred to in various places in this Report.

Between 2013/14 and 2022/23, there has also been a change in the profile of access applicants:

- applications from members of the public increased from 48% to 84%
- applications from legally represented members of the public increased from 28% to 48%.

In the data submitted by agencies to the IPC, 'members of the public' includes all applicants who are not Members of Parliament, media, community groups, or private sector businesses.

Despite the higher overall application numbers in 2022/23 and a different mix of applicants, agencies have reported higher levels of compliance with the statutory timeframes than in 2013/14. Agencies also report that they have refused access in full on fewer occasions:

- decisions made within the statutory timeframe increased from 80% to 88%
- decisions refused in full declined from 8% to 6%.

Spotlight on informal release

Under the GIPA Act, there are four pathways for people to access government information. Over the past 15 years, the IPC has collected data on three of these pathways but there is no legislated requirement for agencies to report on the informal release pathway. It has been difficult, therefore, to analyse the progress that agencies have made in relation to this pathway.

In the reporting year, the IPC focused additional oversight effort on the informal release activities of the public sector. In May 2023, the Information Commissioner released a report containing findings from research into the informal release pathway, which included an audit by the IPC of the practices of a selection of agencies. Encouragingly, 58% of audited agencies reported that they kept statistics on informal release, even though this data is not required under legislation. The audit also showed that 83% of informal requests recorded by agencies resulted in some information being released. However, it also found that 53% of agencies did not have a documented policy or procedure to support staff dealing with informal access requests. Additionally, 58% of agencies did not provide a written outcome to an applicant who requested information informally.

The Report and the IPC's audit results suggest that the informal release pathway may be underutilised and recommendations were made in the Report to improve informal release in NSW.

These recommendations included that the IPC issue guidance on informal release and a summary of best practice principles. New and updated informal access resources, including Information Access Guideline 11 – Release of Information, were subsequently released during Right to Know Week NSW 2023. This new material also included a training webinar published on the IPC's YouTube channel on Informal Release of Information.

In March 2023, the IPC also included new fields about informal release in the IPC's GIPA Reporting Tool. Agencies using the Tool can now provide data on informal access to the IPC together with their mandatory reporting data. Many agencies did in fact provide such data during the reporting year, so for the first time this Report can include analysis about information released informally. Since providing the IPC with this information is voluntary, this Report can only supply limited insight into the operation of the pathway, not a developed understanding across the public sector. The IPC will consider how it can assist agencies and members of the public to utilise this pathway more effectively in the future.

Falling short on Open Access

Compliance with Open Access information requirements under the GIPA Act's mandatory release pathway continues to be a concern. As with past reports, IPC audits demonstrate that levels of agency compliance with Open Access obligations should improve.

The IPC invested in a website scanning tool during the reporting year to assist it to monitor compliance with website publication obligations. Using this tool, the IPC hopes to identify areas of non-compliance faster and more effectively. In the future, the tool can be used to supplement the IPC's manual desktop audits conducted for annual reporting purposes and can be adapted to locate a wide variety of material published on agency websites. In the next reporting year, the IPC will explore opportunities to deploy it to assist with the performance of the IPC's other regulatory functions and investigations.

Sharper focus on technology

New technology applications in the public sector continued during the reporting year, including for artificial intelligence (AI) and forms of automated decision-making. As this trend continues, the preservation of information access rights will remain an important integrity requirement.

The AI Regulatory Scan undertaken by the IPC during the reporting year provided an overview of the then current global approaches to risks associated with AI. The scan also considered the regulatory environment in NSW and the current treatments applied to AI risks within this jurisdiction.

The scan presented a range of options for preserving or enhancing information access rights in NSW in the context of expanding public sector AI and other technology uses, including:

- mandating proactive disclosure of the use of AI by agencies by specifying it as Open Access information under the GIPA Act
- specifying that AI Open Access information must include a statement of use, inputs and a description of the operation of the AI system
- preserving access to information rights in contracts for technology services both to and for agencies, particularly where the services include AI to assist administrative decision-making
- specifying AI as a factor in favour of the disclosure of information under the GIPA Act, to balance an existing asymmetry that protects the business interests of agencies and third-party providers.

As the new Information Commissioner, I support these legislative options being considered as a priority, both to manage the risk that public access rights are being eroded and to support good government. I also note that the GIPA Act already requires agencies to include a description of the ways in which their functions affect members of the public in their published Agency Information Guides (AIGs). Where agencies use automated or machine-enhanced decision-making, this information should be being included in their AIGs now.

I thank the officers of the IPC for their hard work in compiling the data in this Report for tabling in the NSW Parliament and I trust its contents will guide consideration of important administrative improvements and legislative change.

Rachel McCallum
IPC CEO, Information Commissioner