

# Pathway 1: Mandatory proactive release of information

Since 2010/11, the IPC has conducted an annual desktop audit of agency compliance with mandatory proactive release requirements under the GIPA Act (also known as Open Access information).

In 2022/23, the IPC conducted a desktop audit of the ten principal departments and a sample of 20 smaller agencies. The desktop audit identified whether each department or sampled smaller agency had complied with the GIPA Act to publish on its website:

- an Agency Information Guide (AIG)
- agency policy documents
- an agency disclosure log
- an agency contracts register.

The desktop audit did not examine the comprehensiveness of the information made available, such as whether an agency had published all its policy documents or whether the information is up to date.

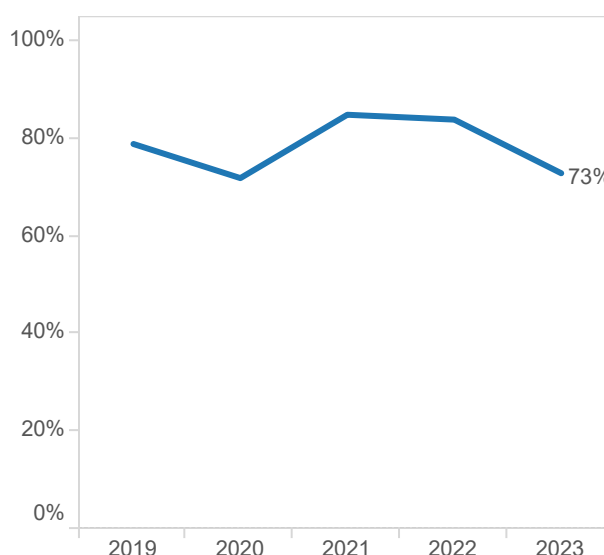
As a result of Machinery of Government changes which took effect from 1 July 2019, the total number of departments decreased from 10 in 2018/19 to eight in 2019/20. This number then increased to nine with the establishment of Regional NSW as a new Department in 2020. In 2021, the Department of Enterprise, Investment and Trade was established, bringing the total number of departments up to 10 for 2022/23.

When comparing the audit results from 2022/23 with past years, it is important to note that changes in the number of principal departments has affected the overall audit sample, which does not allow for accurate direct comparisons from year to year.

## Compliance with Open Access requirements has declined

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements declined this year to 73% compared with 84% in 2021/22 and 85% in 2020/21 (Figure 1). The change is largely a result of a drop in compliance by the sampled smaller agencies.

**Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements, 2018/19 to 2022/23**



The desktop audit also showed the following:

- 70% of sampled agencies had an AIG, a significant decline from 86% in 2021/22 and 2020/21
- 90% of sampled agencies had policy documents available, consistent with 90% in 2021/22 and 2020/21
- 63% of sampled agencies had a disclosure log, a significant decline from 86% in 2021/22 and 2020/21
- 67% of sampled agencies had a contract register, a moderate decline from 79% in 2021/22 and 2020/21.

Consistent with the 2021/22 results, compliance by departments was significantly higher at 98% than the rate for all agencies which was 73% overall.

Agencies, other than departments, had a significantly lower overall compliance rate of 60%. This is a decline from the 2021/22 results (78%) for sampled agencies. In response to the low compliance rate by smaller

agencies, the IPC has examined Open Access information compliance within the Council sector. The IPC first carried out an audit into the disclosure of information by the Council sector in 2020/21 and a follow-up audit was carried out in 2022/23. The [Report](#) was published in June 2023.

The results of the 2023 audit demonstrate that the majority of councils elevated compliance with their mandatory reporting requirements. However, given the rate of compliance by smaller agencies remains lower overall, it indicates that other (non-council) smaller agencies should focus on improvement.

In September 2023, the IPC engaged external consultants to assess the feasibility of conducting automated website scans to identify the existence of AIGs on agency websites (see 'Issue Highlight' at the end of this section for more detail). The ensuing website scans were conducted in December 2023 and January 2024. This scanning activity reflected the reporting year's audit results. It confirmed that smaller agencies struggled to meet their obligations to publish AIGs either at all or in an easily accessible way. The scanning results were similar to those found in the desktop audit, at 57% and 60% compliance respectively.

The IPC's use of the scanning tool will continue to be refined, however these preliminary results indicate it provides useful data in an efficient way that can be cross-checked against manual audit information. Cross-checking provides further assurance as to the estimated compliance rate of agencies. Due to the tool's effectiveness, the IPC will expand it to scan for disclosure logs and other policy documents. The scan results for these categories of information can also be cross-checked against data from manual audits for the purposes of monitoring compliance.

## Compliance with *additional* Open Access requirements for departments remains low

The 10 principal departments are subject to a number of additional requirements for Open Access as set out in clause 6(2) of the GIPA Regulation. These are to make available:

(a) *a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year*

- (b) *the total number and total value of properties disposed of by the Department during the previous financial year*
- (c) *the Department's guarantee of service (if any)*
- (d) *the Department's code of conduct (if any)*
- (e) *any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.*

The IPC conducted a desktop audit of compliance by principal departments with these five additional Open Access requirements. The audit found that compliance with these additional requirements remains low.

The following results of compliance were met by the major departments:

- 0% (none) fully met and 60% (six departments) only partially met the requirement in relation to major assets and acquisitions. This is a significant decline from the 89% that partially met requirements in 2021/22.<sup>1</sup>
- 10% (one department) fully met and 60% (six departments) only partially met the requirement in relation to both the total number and the total value of properties the department disposed of during the previous financial year, with this being a moderate decline on the 67% that partially met requirements in 2021/22.<sup>2</sup>
- 40% (four departments) had the department's guarantee of service. This is a moderate increase from 33% (three departments) in 2021/22.
- 100% had the department's code of conduct, consistent with 100% in 2021/22.
- 100% had a number of documents/webpages marked as 'standard' or 'code' available on the website, consistent with 100% in 2021/22.

Compliance with the first three of these five additional Open Access requirements continues to remain low, with departments either failing to publish the required Open Access information in full on their website or provide it via alternative mechanisms. For example, publication of Open Access information in the department's annual report rather than directly to the department's website.

The IPC will continue to promote the checklist [Open Access information under the GIPA Act – agency requirements](#) to inform agencies and departments about Open Access information required to be released.

<sup>1</sup> To fully comply with this requirement, a list of major assets, appropriately classified and with major acquisitions highlighted, must be easily found on the department's website. Partial compliance refers to where a complete list of assets is available but only in the annual report (and not published on the department's website), or where an incomplete list is available either on the website or in the annual report but the assets are either not appropriately classified or major acquisitions are not highlighted.

<sup>2</sup> To fully comply with this requirement, the total number and total value of properties disposed of by the department during the previous financial year must be easily found on the department's website. Partial compliance refers to where both the total number and the total value of properties disposed of is only available in the annual report (and not published on the department's website) or where only some of the required information is available (that is, only the total number of properties disposed of, or only their total value), either on the website or in the annual report.

The IPC will also consider other ways in which it can support agencies to improve compliance with their mandatory proactive release obligations.

On 1 July 2023, the GIPA Regulation was amended to require agencies that administer grant schemes to make certain information about those grants publicly available, as Open Access information. Grant information is to be published on the designated website (<https://www.nsw.gov.au/grants-and-funding>). The IPC will review this website for compliance with the GIPA Regulation and provide further commentary on this in the 2023/24 Report. The IPC will also consider whether its new website scanning tool can be used to support an assessment of whether agencies are complying with the requirement to publish grant information.

## Complaints to the IPC about mandatory proactive release

Complaints to the IPC identified some concerns regarding compliance with the mandatory requirements for proactive release of information.

In 2022/23, 16% of complaints finalised by the IPC concerned Open Access information, a significant decline from 31% reported in 2021/22. Whilst this is a significant decline in percentage terms, in absolute terms it was only a decrease of 2 cases, from 15 cases to 13 cases, with this result reflecting the increase in the number of total complaints received in 2022/23. As in previous years, Open Access-related complaints mainly concerned agencies *not* making Open Access information available.

## Case Study: Summary of audit findings concerning agency compliance with Disclosure Log and section 6(5) Requirements

A key object of the GIPA Act is to authorise and encourage the proactive public release of government information by NSW agencies. Following the low levels of compliance with Open Access requirements reported in 2022/23, the IPC undertook two separate, but related audits to examine the rates of compliance with:

- the requirement to maintain a record that publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public (disclosure log); and
- the requirement to maintain a record of Open Access information that it does not make publicly available on the basis of an overriding public interest against disclosure (section 6(5) record).

A representative sample of 79 agencies across four sectors were selected for inclusion in both desktop audits, which were undertaken in mid-October 2023. The final reports in each audit were published in January 2024.

Although the audit examining agency compliance with disclosure log requirements identified that the vast majority of agencies sampled had made their disclosure log publicly available on their websites, almost half of the agencies sampled did not ensure that their disclosure logs are kept current and updated on a regular basis. The audit further identified that a minority of agencies sampled had failed to ensure that their disclosure log is publicly available. To assist agencies to improve their compliance with the requirements pertaining to disclosure logs, the audit report included six recommendations by the Information Commissioner.

In the audit examining agency compliance with section 6(5) of the GIPA Act (Open Access information not made available for reasons of overriding public interest), compliance failures across all agency sectors were identified. The audit report included seven recommendations by the Information Commissioner to assist agencies to understand the requirements under section 6(5) of the GIPA Act and to raise compliance rates.

The level of non-compliance identified in both audits undermines the object of the GIPA Act to support a responsible and representative system of government that is open, accountable, fair and effective. Agencies are encouraged to have regard to the guidance and recommendations made in both audit reports and to implement the Information Commissioner's recommendations.

## Issue Highlight: Agency Information Guide Website Scanning Tool

In response to the steady number of complaints during the reporting year about Open Access information availability, the IPC assessed the feasibility of conducting automated searches to identify the existence of AIGs on agency websites.

An automation script was developed and tested, with the final script being run a number of times to identify additional refinements and ensure consistent outcomes. The final script was run using a comprehensive list of URLs of agency websites.

The January 2024 results for finding a match to 'Agency Information Guide' were as follows:

URL Category	Quantity	Found		Not found		Error*	
		Number	Percent	Number	Percent	Number	Percent
Local Councils	128	72	57%	26	20%	30	23%
Universities	10	4	40%	2	20%	4	40%
State-Owned Corporations	8	7	87%	1	13%	0	0%
<b>Total</b>	<b>146</b>	<b>83</b>	<b>57%</b>	<b>29</b>	<b>20%</b>	<b>34</b>	<b>23%</b>

\* 'Error' is a result of the script not finding a yes/no result and instead leaving a technical error message.

There was a higher-than-expected number of errors with local councils at 30 (23%), with the automated script unable to confirm whether or not an AIG was present.

Following a manual review of agency websites, several sites that the automated tool determined not to have AIGs were found to have AIGs available. This was because the websites had not used the term 'Agency Information Guide' but had used name variations such as 'publication guide'. Future iterations of the automated tool can be adapted to broaden the search criteria to resolve this issue and further improve the reliability of its outputs. Agencies are also encouraged to make sure their AIGs are clearly identified as such for their website visitors, including by referencing the GIPA Act.

The manual review also confirmed that all of the initial 72 positive findings were correct. Of the 72 positive findings from local councils, 30 (42%) were also PDF format documents so additional details about the status of the AIG were available, including creation date and modified date. For example, the data returned from the scan of PDF AIGs contained 'document modified' dates ranging from 27 July 2011 through to 8 May 2023, and showed 50% of all documents were modified within the preceding 12 months.

Manual follow-up on universities indicated that the automated tool was less successful in identifying when an AIG was present. This was largely because the university websites tended to contain a large number of documents that included terms such as 'guide' and 'information'.