

# Appendices

# Appendix 1

## Notes on data sources and previous reports

The IPC's annual report on the Operation of the *Government Information (Public Access) Act 2009* (GIPA Act) is based on information submitted by NSW public sector agencies and analysed within the IPC. Data has been collected since 2010/11.

For the first four years, data was submitted by agencies in a variety of formats, and then manually entered into a database within the IPC.

In mid-2015, the IPC introduced a new online GIPA Tool as a way for agencies to manage their applications, provide their annual reports to the IPC and directly upload data.

The data analysed for this Report should be considered as a snapshot of agencies' compliance for the reporting year as available at 24 January 2024 (the date when the IPC commenced downloading agencies' reported data from the GIPA Tool).

Data updates by agencies may affect historical data and future reports. This is particularly relevant to data regarding timeliness reported in the 2017/18 Report and 2021/22 Report. On 29 April 2019, 7 July 2023 and 17 November 2023, the Information Commissioner tabled an erratum notice to correct data reported by an agency.

Since 2016/17, data has been reported from the following sectors:

- Government
- Council
- University
- Minister
- State-Owned Corporations.

Previously, SOC data had been included with that of the Government sector. Since 2016/17, SOCs have been separately identified in order to give greater insight into their GIPA operations and those of the Government sector. Accordingly, data for the Government sector reported prior to 2016/17 is not comparable to data in this Report.

In March 2018, the IPC published an online, interactive [Agency GIPA Dashboard](#) to facilitate agency and community access to this data. This Dashboard was updated in 2023 to enable a five-year comparison of data for agencies against their respective sectors and all agencies' reported figures. This enables better trend identification for each agency. This online data may be updated to take account of changes advised by agencies. Accordingly, the online GIPA Dashboard will represent the most up-to-date and accurate source of data on agency GIPA operations.

The annual reporting period for universities and the Department of Education is a calendar year. This calendar year data is included here, however, to assist with cross-sector comparability. For example, GIPA data from universities' 2022 annual reporting has been treated as for the 2022/23 financial year.

Data reported in relation to mandatory proactive release reflects the number and composition of the principal departments for each financial year. Periodic changes to the number and functions of principal departments alters the overall audit sample for that reporting period and therefore does not allow for direct comparisons with previous years' results.

Data reported for 2022/23 reflects the structure of agencies as of 30 June 2023.

Limited data was supplied from the Minister sector. As noted throughout this Report, this lack of data is attributable to the changes that occurred after the State general election on 25 March 2023.

# Appendix 2

## The Legislative Framework

### Government Information (Public Access) Act 2009

The object of the *Government Information (Public Access) Act 2009* (GIPA Act) is to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective 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
- ensuring that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act applies to Government departments and agencies, local councils, universities, ministers and their staff, and state-owned corporations.

The guiding principle of the GIPA Act is to make information more accessible to the public. The Act embodies the general presumption that the disclosure of information is in the public interest unless there is a strong case to the contrary.

#### 1. Mandatory proactive release

The mandatory proactive release of information is one of the GIPA Act's four pathways for information release and access. Through this pathway, the GIPA Act requires NSW public sector agencies to release a prescribed set of information to the public, known as Open Access information. This information must be made publicly available online and free of charge. Open Access information of ministers may be made available on the website of the relevant department.

The benefit of mandatory proactive release is that the pathway ensures that a minimum, consistent set of information that is regularly reviewed and updated to maintain relevance and currency, is freely available to the public. Mandatory proactive release is an important vehicle in achieving better service delivery through information access, transparency and increased citizen input to government policy and service delivery.

#### 2. Authorised proactive release

The GIPA Act authorises and encourages agencies to make information available unless there is an overriding public interest against disclosure.

Agencies (except Ministers) are required under the GIPA Act to review their program for the proactive release of information at least annually, and identify additional kinds of information that should be made publicly available. These agency reviews are not merely a reporting obligation. They provide the tool to drive the continuous release of information under this pathway. This information can be made publicly available in any manner that the agency considers appropriate either free or at the lowest reasonable cost.

Through this pathway, agencies have a responsibility to promote policies and practices that ensure as much information as possible is made publicly available.

The aim of proactive release is to maximise the amount of information that is released by agencies. This requires creating a culture where information release is a matter of course. The proactive release of information has many benefits, including a more informed community that is better able to engage and influence the development and delivery of services, agency operations and broader policy and community debates.

### 3. Informal release

The GIPA Act enables agencies to release government information in response to an informal request for information, unless there is an overriding public interest against disclosure.

This pathway promotes the transition to a system which will result in the general release of government information.

### 4. Formal access applications

The GIPA Act provides individuals and organisations with a right to apply for, and access most government information, unless there is an overriding public interest against disclosure (section 9). The GIPA Act outlines a formal process that must be followed by applicants and agencies. The steps for applicants include:

- putting an application in writing
- stating that the application is seeking information under the GIPA Act
- including a postal address or email address
- explaining clearly the information that is being requested
- paying an application fee of \$30.

Agencies must assess each application that is received. For valid access applications, agencies must apply the public interest balancing test and consider the factors for and against the disclosure of the information that is being requested.

The main benefits of the formal access pathway include:

- the right to seek access is legally enforceable
- agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application
- agencies must apply the public interest balancing test and consult with third parties to whom the information relates, and also may consult with other agencies
- applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by NCAT.

Section 125 of the GIPA Act requires agencies to report to Parliament annually on their obligations under the GIPA Act, including reporting on GIPA data. A copy of the Report is to be provided to the Information Commissioner after the Report has been tabled in Parliament. This mandated information is set out in clause 8(a), (b), (c) and (d) of the GIPA Regulation. Schedule 2 of the GIPA Regulation sets out the prescribed form for clause 8(d) reporting through Tables A – I.

## Government Information (Public Access) Regulation 2018

The Government Information (Public Access) Regulation 2018 (GIPA Regulation):

- prescribes additional Open Access information that local authorities, ministers, departments and statutory bodies must make publicly available
- sets out the statistical information regarding formal applications that agencies must include in their annual reports
- in the case of an access application relating to a school, extends the period in which the application must be decided if the usual 20-day period for deciding the application occurs during the school holidays
- specifies the corresponding access to information laws of other Australian jurisdictions under which information may be exempt (this is a relevant public interest consideration against disclosure under section 14)
- declares certain bodies to be public authorities for the purpose of the GIPA Act
- declares certain entities to be sub-agencies and parent agencies for the purpose of access applications
- provides that records held by the Audit Office or the Ombudsman's Office that were originally created or received by another agency, are taken to be held by the original agency.

## **Government Information (Information Commissioner) Act 2009**

The system of public access to information is overseen by the Information Commissioner, established under the *Government Information (Information Commissioner) Act 2009* (GIIC Act). Under the GIIC Act, the Information Commissioner's role includes:

- promoting public awareness and understanding of the Act
- providing information, advice, assistance and training to agencies and the public
- dealing with complaints about agencies
- investigating agencies' systems, policies and practices
- reporting on compliance with the Act.

Under section 37 of the GIIC Act, the Information Commissioner is required to provide an annual report to Parliament on the operation of the GIPA Act, generally, across all agencies.

This Report fulfils the Information Commissioner's obligation in this regard.