

Access to information and the NSW Independent Planning Commission

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information and
privacy commission
new south wales

The Information and Privacy Commission NSW

Who we are

- IPC is an independent agency that supports the Information Commissioner and the Privacy Commissioner to oversight the NSW public sector in relation to privacy and information access. The Information Commissioner is the CEO.
- Some of the key IPC/Commissioner functions are:
 - Promote and protect privacy and information access rights in NSW
 - Provide information, advice, assistance and training for agencies and individuals
 - Review and audit the performance and decisions of agencies
 - Investigate complaints and manage PIDs about privacy and information access
 - Provide advice to the NSW Government about legislation and technology

The Information and Privacy Commission NSW

Our jurisdictions and who we regulate

The following types of NSW organisations are subject to oversight by the Commissioners:

- State government departments and agencies
- Universities
- Local councils
- Ministers
- State-Owned Corporations (under both jurisdictions from November 2023 – with some limits in privacy)
- Other NSW public authorities

In addition, private health service providers that collect, hold or use health information are also subject to the NSW privacy legislation.

Legislation and oversight

The IPC has functions under four pieces of NSW legislation:

- *Government Information (Public Access) Act 2009* (GIPA Act)
- *Government Information (Information Commissioner) Act 2009* (GIIC Act)
- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)

Parliamentary oversight and administration of Acts:

- Committee on the Ombudsman, Law Enforcement Conduct Commission and the Crime Commission
- Allocation of legislation to ministers
 - Attorney General
 - Minister for Customer Service and Digital Government
 - Minister for Health, Minister for Regional Health
 - Minister for Mental Health

Role of the Information Commissioner

- Promote public awareness & understanding of the GIPA Act
- Provide information, advice, assistance & training to agencies and the public
- Assist agencies in the exercise of their functions under the GIPA Act
- Issue guidelines & publications to assist both agencies & the public
- Review GIPA decisions made by agencies
- Monitor, audit and report on agencies & their use of and compliance with the GIPA Act
- Make reports and provide recommendations to the Ministers about proposals for legislative and administrative changes
- Investigate complaints under the *Government Information (Information Commissioner) Act 2009* (GIIC Act)

The right to access government information

Universal Declaration of Human Rights Art. 19:

- *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

UNESCO Sustainability Goal 16:

- *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*

Target 16.10:

- *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.*

Principles of Open Government



OECD Principles of:

1. Integrity
2. Accountability
3. Transparency
4. Stakeholder participation

Government Information (Public Access) Act

- Section 3(1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by -
 - (a) authorising and encouraging the proactive public release of government information by agencies,
 - (b) giving members of the public an enforceable right to access government information, and
 - (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

Authorised Proactive Release

- **Section 7** of the GIPA Act authorises and encourages agencies to make any government information held by an agency publicly available unless there is an *overriding public interest against disclosure*.
- This may include any government information or datasets that are compiled, recorded or stored in printed or electronic form.
- Agencies are required to conduct reviews of their program for the release of government information at least annually.
- OIPC – consider a public register of proactively released information? New questions in GIPA Tool this year

Mandatory Open Access Information

GIPA Act requires all agencies to make specific information available:

Mandatory proactive release of certain government information

(1) An agency must make the government information that is its **open access information** publicly available unless there is an overriding public interest against disclosure of the information.

Note—

Part 3 lists the information that is open access information.

(2) Open access information is to be made publicly available free of charge on a relevant website (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.

(3) At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.

(4) An agency must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.

(5) An agency must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.

(6) Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright.

(7) In this section—

relevant website means—

(a) a website maintained by the agency, or

(b) for open access information prescribed under section 18(g) for which a website is prescribed by the regulations—the website.

Mandatory Open Access Information

GIPA Act requires all agencies to have an “agency information guide”

OIPC: [Access to Information policy](#) is findable on website but not an “Agency Information Guide” or a Disclosure Log?

20 Agencies must have agency information guide

(1) An agency (other than a Minister) must have a guide (its agency information guide) that—

- (a) describes the structure and functions of the agency, and
- (b) describes the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public, and
- (c) specifies any arrangements that exist to enable members of the public to participate in the formulation of the agency’s policy and the exercise of the agency’s functions, and
- (d) identifies the various kinds of government information held by the agency, and
- (e) identifies the kinds of government information held by the agency that the agency makes (or will make) publicly available, and
- (f) specifies the manner in which the agency makes (or will make) government information publicly available, and
- (g) identifies the kinds of information that are (or will be) made publicly available free of charge and those kinds for which a charge is (or will be) imposed.

(2) An agency must make government information publicly available as provided by its agency information guide.

(3) The Chief Executive of the Office of Local Government may, in consultation with the Information Commissioner, adopt mandatory provisions for inclusion in the agency information guide of local authorities. The agency information guide of a local authority must include any such mandatory provision unless the Chief Executive otherwise approves in a particular case.

Mandatory Open Access Information

GIPA Act requires all agencies to review AIGs annually and liaise with IC:

21 Adoption and review of agency information guide

An agency must adopt its first agency information guide within 6 months after the commencement of this section and must review its agency information guide and **adopt a new agency information guide at intervals of not more than 12 months.** An agency may update and amend its agency information guide at any time.

22 Role of Information Commissioner

(1) An agency must notify the Information Commissioner before adopting or amending an agency information guide and must, if requested to do so by the Information Commissioner, consult with the Information Commissioner on the proposed agency information guide or amendment.

(2) The Information Commissioner can issue **guidelines and model agency information guides** for the assistance of agencies in connection with agency information guides.

Mandatory Open Access Information

- [Council Sector](#) has specific requirements e.g. Returns of interests; Plans and Policies, Info re DAs, approvals orders and other docs, Register of current disclosures of political donations kept in accordance with s328A of the LGA Act – nexus with IPC determinations (see GIPA Regulation)
- Current issues in Council Sector – [Disclosures of interest 2021 Compliance Report](#) and [LG Sector Follow up GIPA Compliance Report 2023](#)
- AI in planning administration: IC will write to Department about mandatory and other open access information for which OPIAD may exist (eg safety) plus AIG transparency.
- Department has bespoke AI pages on [website](#) and notes:

The department will adhere to the NSW Government AI Assurance Framework and NSW AI Ethics Policy, which set out 5 overarching principles: trust, transparency, customer benefit, fairness, privacy and accountability.

A key ethical pillar of any use of AI in planning will be transparency. This will guide how the department and councils engage with external providers of AI technologies. Intellectual property rights around models and algorithms will need to be considered in any engagements with service providers. The department and councils must be able to provide their customers with meaningful information about how decisions are made and how data is used.

International Day for Universal Access to Information

- UN declared 28 September each year as an international day for recognizing the universal right to access information
- In NSW, this has traditionally been celebrated under the banner of “Right to Know” week although other Australian jurisdictions now focus on the UN Day.
- In 2024, the theme being celebrated by the UN is “Mainstreaming Access to Information and Participation in the Public Sector”.
- This year’s Global Conference will explore how mainstreaming Access to Information (ATI) laws across government sectors can enhance the right to information. The conference's main objective is to offer governments and civil society a list of best practices for mainstreaming the right to information **into the organisational systems and culture of different public authorities.**
- Independent Planning Commission is encouraged to be a Right to Know Champion through IPC.

Questions



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