



Fact Sheet

Updated December 2022

How the GIPA Act applies to agencies' wholly-owned subsidiaries

This fact sheet aims to provide guidance on when agencies' wholly-owned subsidiary entities are captured under the *Government Information (Public Access) Act 2009* (GIPA Act).

The [IPC Fact Sheet: What is an agency?](#) also provides guidance on when an agency is captured under the GIPA Act.

This is important to know because some agencies' wholly-owned subsidiaries may be required to comply with the GIPA Act in the same way as agencies.

Wholly-owned subsidiaries under the GIPA Act

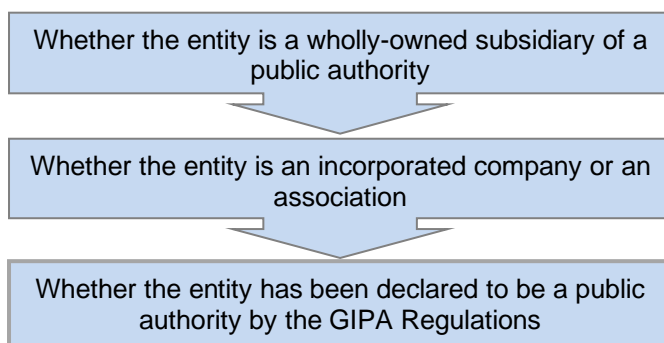
The GIPA Act applies to public authorities including wholly-owned subsidiaries of the Crown in right of the State or of a public authority. The Government Information (Public Access) Regulation 2018 NSW (GIPA Regulation) can also declare entities to be public authorities.

This fact sheet provides guidance on when wholly-owned subsidiaries of agencies are captured under the GIPA Act.

A wholly-owned subsidiary of a public authority that is an incorporated company or association will not be captured by the GIPA Act unless declared in the GIPA Regulations. These wholly-owned subsidiaries will be required to comply with the GIPA Act in the same way as agencies.

Factors to consider

The following factors will impact upon whether a wholly-owned subsidiary entity is captured by the GIPA Act:



Example 1

Is the following entity captured under the GIPA Act?

The entity has the following characteristics:

- It is a wholly-owned subsidiary of a university
- The wholly-owned subsidiary is a company limited by shares
- The wholly-owned subsidiary has not been declared a public authority by the GIPA Regulations.

This entity is not a public authority and therefore is not an agency. This is because the wholly-owned subsidiary is an incorporated company and it has not been declared to be a public authority by the GIPA Regulations.

The incorporated company therefore, as identified in clause 2(3)(a) of Schedule 4 of the GIPA Act, falls outside the definition of a public authority.

Example 2

Is the following entity captured under the GIPA Act?

The entity has the following characteristics:

- It is a wholly-owned subsidiary of a state-owned corporation
- The wholly-owned subsidiary is a proprietary company
- The wholly-owned subsidiary has not been declared a public authority by the GIPA Regulations.

This entity is not a public authority and therefore is not an agency. This is because the wholly-owned subsidiary is an incorporated company, and it has not been declared to be a public authority by the GIPA Regulations.

The incorporated company therefore, as identified in clause 2(3)(a) of Schedule 4 of the GIPA Act, falls outside the definition of a public authority.

Example 3

Is the following entity captured under the GIPA Act?

The entity has the following characteristics:

- It is a wholly-owned subsidiary of a public authority
- The wholly-owned subsidiary is not an incorporated company or association

- The wholly-owned subsidiary has been established for a public purpose under the provisions of a legislative instrument.

This entity is a public authority and therefore is an agency.

For more information

Contact the Information and Privacy Commission NSW (IPC):

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Website: www.ipc.nsw.gov.au

NOTE: *The information in this Fact Sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.*