



Delegation or authorisation of GIPA Act functions

The *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) contains a number of powers, functions and duties of public sector agencies relating to access to government information. Appropriate delegation or authorisation of these responsibilities, supported by awareness and training, is essential to information governance.

Certain functions under the GIPA Act need to be exercised by or with the authority of the principal officer of the agency. Their authority may be given either generally or in a particular case. Those functions are:

- functions of an agency under section 7 of the GIPA Act relating to authorised proactive release of government information¹
- functions of an agency under section 8 relating to informal release of government information²
- the function of making a 'reviewable decision' in connection with an access application made to an agency.³

'Reviewable decision' means a decision of an agency that is a reviewable decision under Part 5 of the GIPA Act⁴ and incorporates a broad range of preliminary and final decisions.⁵

If the principal officer is not personally undertaking these functions, they will need to provide authority to appropriate officers through either a delegation or authorisation.

Decisions made without proper authority cannot retrospectively be made valid. Therefore, it is important to carefully plan, prepare, publicise and review any instrument of delegation or authorisation.

1. Identify the principal officer of the agency

The principal officer of an agency⁶ includes:

- the head or chief executive officer (however designated) of the agency; or
- the person of greatest seniority in the agency.

In the case of an agency that is a minister, it includes the minister.⁷

For departments and certain agencies, the head of the agency is set out in the *Government Sector Employment Act 2013* (NSW).⁸ Other agencies should review their legislation and seek legal advice if necessary.

2. Plan the delegation or authorisation

In planning delegations or authorisations, arrangements in respect of decisions on formal access applications require particular care because they concern the legally enforceable right of access to government information and are subject to internal and external review under Part 5 of the GIPA Act.

Agencies need to ensure there are enough decision makers at the appropriate level of seniority and with the necessary expertise to manage access applications within the strict timeframes under the GIPA Act.⁹ At a minimum, these staff will need to understand and apply the legislation and any guidelines, comply with administrative law principles for decision making¹⁰ and prepare statements of reasons where required.

The GIPA Act provides a framework for independent decision making by appropriately authorised officers. This is envisaged by the right to seek internal review of decisions on access applications, which involves the making of an entirely new decision by a different person, who is at least as senior as the original decision maker.¹¹

¹ Section 7(5) of the GIPA Act.

² Section 8(6) of the GIPA Act.

³ Section 9(3) of the GIPA Act.

⁴ Clause 1 of Schedule 4 to the GIPA Act.

⁵ Section 80 of the GIPA Act sets out decisions that are reviewable under Part 5. Making a reviewable decision in connection with an access application includes undertaking an internal review (section 84(1) of the GIPA Act).

⁶ See [IPC Fact Sheet – What is an agency?](#)

⁷ Clause 1 of schedule 4 to the GIPA Act.

⁸ Section 3 and Schedule 1 (head of a public service agency).

⁹ See sections 57 and 86 of the GIPA Act.

¹⁰ See [NSW Ombudsman Good conduct and administrative practice: Guidelines for state and local government \(3rd Edition, March 2017\)](#).

¹¹ See sections 82 and 84 of the GIPA Act. Internal review of a decision is not available if the decision is made by the principal officer of the agency or a Minister (or a member of the Minister's personal staff) (section 82(2)).

In planning delegations and authorisations, it is important to take into account that decision makers must make their own decisions in accordance with the GIPA Act, and exercise their own discretion, free from the direction or influence of others.

Additionally, although decision makers can ask for information and advice to inform their decisions, the GIPA Act does not allow for collective decision making by a group, committee or board.¹²

In determining the staff that should be authorised by the principal officer to undertake decision making under the GIPA Act, agencies should consider the following contingencies:

- periods where there is an increase in the number or complexity of requests for access to government information
- staff turnover, leave and other absence
- internal reviews which must be undertaken by staff who are no less senior than the original decision maker, and ideally more senior
- the potential for actual or perceived conflicts of interest requiring allocation of an access application or internal review to another member of staff
- the impact of other work responsibilities on the availability staff.

Agency size, structure and the nature of government information held varies significantly in New South Wales and each agency should consider its own circumstances, resources and requirements, seeking expert advice if necessary.

3. Prepare the delegation or authorisation

In determining whether an instrument of delegation or authorisation is the appropriate way to give authority to decision makers, it may be necessary to obtain legal advice that considers legislation relevant to the agency, particularly that provides powers of delegation by a principal officer.¹³

A delegation or authorisation by the principal officer should be made in writing. Apart from any legal requirement to do so,¹⁴ this ensures the decision maker's authority can be made apparent to the recipients of the decision, as well as on review or appeal.

There is no specific form for a delegation or authorisation under the GIPA Act. It may be an instrument or letter that

is provided to the individual or position holder who is the recipient of the authority.

Generally, the instrument will state whether it is a delegation or an authorisation. It will also:

- identify and be signed by the principal officer
- identify the individuals or positions being given authority, and in respect of which functions
- state the duration of the delegation or authorisation, for example, if it is in effect until it is replaced or for a specific time or purpose
- state whether the delegation or authorisation is about a specific access application or applications
- in the case of a delegation, state whether the delegate is allowed to sub-delegate to another person.¹⁵

4. Publicise the delegation or authorisation

Once finalised, the instrument of delegation or authorisation should be circulated to agency staff. Agencies should provide training to ensure staff understand how the arrangements operate, including who has authority and in respect of which decisions.

The instrument of delegation or authorisation should also be published on the agency's website as open access information.¹⁶

Where a decision is made under delegation or authorisation, notices of decision on access applications should expressly state the basis of the decision maker's authority to make the decision, referring to section 9(3) of the GIPA Act or the relevant power of delegation.

Agency decision templates should be updated accordingly.¹⁷

5. Review the delegation or authorisation

Delegations or authorisations should be regularly reviewed and updated.

This is particularly important where there are machinery of government changes merging or establishing new agencies, changes in an agency that create new roles, job titles or positions, or legislative amendments that affect powers of delegation.

¹² This was an issue in the external reviews by the Information Commissioner referred to in *Forbidden Foods Pty Ltd v Rice Marketing Board of New South Wales* [2020] NSWCATAD 18 at [23].

¹³ For example, section 13 of the *Government Information (Information Commissioner) Act 2009* (NSW) permits the Information Commissioner to delegate functions of the Commissioner to any member of staff of the Commissioner.

¹⁴ For instance, the *Interpretation Act 1987* (NSW) requires a delegation be in writing (section 49(2)(b)).

¹⁵ For general information about delegations and authorisations, see [Jake Blight and Peter Lahy 'Delegations, authorisations and the Carltona principle' Australian Government Solicitor Legal Briefing No 74 \(14 December 2004\)](#).

¹⁶ Sections 6, 18(c) and 23(c) of the GIPA Act.

¹⁷ The IPC Decision making template recommended for use by decision makers states: 'I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.'

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679

Email: ipcinfo@ipc.nsw.gov.au

Website: www.ipc.nsw.gov.au

The IPC can give general information on compliance with the GIPA Act but cannot give legal advice. Agencies should seek their own legal advice about these issues.