



Informal release of information

The informal release of information provides benefits for agencies and citizens, and increases access to information.

Informal release of information can be more efficient, flexible and timely for agencies and citizens. The effectiveness of this pathway can be enhanced through sound agency practices, recognising the safeguards for staff who release information and by linking the pathway to agency access mechanisms, in particular Agency Information Guides (AIGs).¹

To assist agencies with the 'informal release' provisions of the GIPA Act, this knowledge update deals with:

- what is meant by 'informal release';
- when agencies should consider releasing information informally;
- what might be considered 'reasonable conditions' for informal release of information;
- whether informal releases should be recorded; and
- how to more efficiently release information.

Informal release of information

'Informal release' occurs when an agency gives out information in response to a request, without requiring the person requesting it to lodge a formal access application under Part 4 of the GIPA Act.²

Agencies can decide how information is released: by phone, email, letter, fax, or in person. Information can also be released in an audio visual format, or by providing view-only access. Most agencies already release information in these ways.

Agencies can also impose conditions on the informal release of information.³

Agencies may facilitate the release of information informally by deleting any part of the information that would otherwise result in an overriding public interest consideration against disclosure.

Informal requests for information must be dealt with by agencies to facilitate and encourage promptly and at the

lowest reasonable cost, access to government information.⁴

Encouraging citizens to use the informal pathway

Agencies must provide advice and assistance to citizens requesting or proposing to request information.⁵ That advice includes:

- whether the information sought is publicly available and how the information can be accessed
- the contact details for another agency that might have the information sought
- the contact details of the IPC and advice on the availability of and how to access information published by the IPC that might be relevant
- how to make an access application.

This assistance can include information about accessing information informally. The benefits to agencies of providing informal access include efficiencies saving time and resources and flexibility by:

- releasing information subject to conditions
- providing information without the requirement to provide a formal written decision.

When should agencies consider releasing information informally?

Agencies may release any information informally unless there is an overriding public interest that would prevent this. The context for release of information on request, will be different for each agency, and some relevant questions for agencies to ask themselves regarding informal release of information include:

- Is it in the public interest to release the information to the person or organisation requesting it?
- If an individual requests the information, is it his or her personal information?
- Can any sensitive information, including information about a third party, be easily deleted, allowing the rest to be released?

¹ Report in the Operation of the *Government Information (Public Access) Act 2009*: 2015-2016 page 26

² Section 8(1) GIPA Act

³ Section 8(2) GIPA Act

⁴ Section 3(2) GIPA Act

⁵ Section 16 GIPA Act

Other questions that may be useful to consider include:

- Whether release of the information with conditions will facilitate access?
- Is the information sought of a kind where a detailed application of the public interest test would not be required?
- Could a summary of the information be easily and quickly prepared if it is not possible to release all of the information?
- Is the information relatively simple to search for and obtain?

If the answer to any of these questions is 'yes', and there is no overriding public interest against disclosure, then agencies should consider releasing the information in the most appropriate format without requiring a formal access application.

Agencies retain the discretion to require a formal access application to be lodged in appropriate circumstances. Some examples may include where:

- searching for and retrieving the information sought would require a significant diversion of resources,
- the material contains information about a third party that cannot be deleted easily or without rendering the information useless, and consultation would need to occur, or
- the material is sensitive in nature and requires careful balancing of public interests.

What conditions might be considered 'reasonable'?

The GIPA Act assists agencies to impose 'reasonable conditions' on the informal release of information.⁶ This is a benefit to agencies that they do not have when releasing information under a formal access application.

The conditions that may reasonably be imposed will depend greatly on the circumstances and context of each request.

Three frequently asked questions about 'reasonable conditions' are:

- Would a reasonable condition include charging for photocopying or imposing other processing charges?
- Can an agency place conditions on how information may be accessed or used?
- Is it reasonable to place a time limit on meeting informal requests?

Charges

The GIPA Act is very specific in setting out the circumstances in which fees and charges may be imposed. However, the provision for releasing

information informally is silent on the question of charges.⁷

Where it is not feasible to release the information for free, for example where the volume is too great, or the request is not specific enough, agencies could consider inviting the person making the request to view the documents through inspection, or public access digital facilities where the information is in a digital format. Agencies may provide access to photocopying facilities, if available at the agency, that the person may use at his or her expense.

A further option would be to suggest that a formal access application be lodged. While this would require the applicant to pay a fee and may incur processing charges, the applicant would have the right to seek review of decisions about access and charges in accordance with Part 5 of the GIPA Act. The Information Commissioner can receive complaints about informal release. However the right to a formal review does not exist in relation to informal release.

Conditions on access and use

Agencies are able to decide how information is released in response to an informal request.⁸ It may be reasonable in some circumstances for agencies to limit the way in which the information may be accessed or used. For example, agencies may require that the information, which is highly sensitive, is not to be disclosed to any other person. Another example may relate to the form of access provided when material is subject to copyright and the agency may impose the condition of 'view only' access, and not permit photocopying.

Time limits

Agencies should endeavour to meet requests for information promptly.⁹

The GIPA Act does not provide a time frame for dealing with informal requests for information. However, agencies should give some indication as to when a request for information would be decided.

If an agency decides that meeting an informal request for information would take an unreasonable amount of time, it should discuss with the person making the request all other options including making a formal access application. Agencies should also point out that although a formal access application would involve charges, it would also enable the information request to be considered in greater depth, provide reasons for the decision and provide rights of review of the decision.

The IPC has developed a template letter that agencies may use to communicate options to applicants for accessing information when advising applicants of a

⁶ Section 8(2) GIPA Act

⁷ Section 8 GIPA Act

⁸ Section 8(2) GIPA Act

⁹ Section 3(2)(b) GIPA Act

decision to refuse an informal release request. [View the informal release refusal decision template here.](#)

Authority to release information

An employee releasing information informally under the GIPA Act must be authorised to do so by the principal officer of that agency.¹⁰ The IPC has issued a Fact Sheet on [Delegation or Authorisation of GIPA Act Functions](#).

Protection from liability

Staff of agencies who decide to release information informally, and who believe in good faith that the decision is permitted or required by the GIPA Act, are not exposed to any personal liability, or to any action in defamation or breach of confidence, that may result from the disclosure.¹¹

A decision maker and any other person concerned with disclosing information is protected from criminal liability that may arise because of a decision to disclose information made in good faith under the GIPA Act.¹²

Can agencies suggest that a formal application be dealt with informally?

Yes. If an agency receives an access application, they may contact the applicant and suggest that the request could be dealt with informally. The agency would need to explain to the applicant that this would mean they did not have to pay an application fee, that the agency was not required to deal with the application within a specific time frame under the GIPA Act, that they would not receive a decision in writing and they would not have any review rights.

It is important for agencies to be clear with applicants and document what information can be provided informally and what would require a formal application. This is because the review rights of applicants are impacted by these decisions. If an applicant decides to utilise the informal release pathway, they can withdraw their formal access application. If the formal application is not withdrawn, the agency must proceed to make a decision on it or will be deemed to have decided to refuse to deal with the application. .

Should agencies record the information release informally?

Agencies are encouraged to keep their own records concerning the information they release informally and any conditions attached to release.

Agencies should keep in mind that any records generated regarding informal release will need to comply with the requirements of the [State Records Act 1998](#) (see www.records.nsw.gov.au).

What if there are repeated requests for the same information?

If agencies receive repeated requests for the same type of information, it is a good indication that this information is of general interest to the public.

Agencies may wish to disclose it proactively, subject to any overriding public interest considerations. This would save time and agency resources dealing with the same types of requests, and satisfy the public interest in favour of disclosure.

AIGs can be used to promote proactive and informal release of information. AIGs will often be the starting point for citizens seeking information. Therefore, AIGs present an important opportunity to highlight the availability of the informal pathway and encourage its use where appropriate.¹³

Agency practices that facilitate the proactive release of information ensures that agencies are demonstrating a commitment to Open Government.¹⁴

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

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.

¹⁰ Section 8(6) GIPA Act

¹¹ Sections 113 and 115 GIPA Act

¹² Section 114 GIPA Act

¹³ Report in the Operation of the *Government Information (Public Access) Act 2009*: 2015-2016 page 26

¹⁴ Section 3 GIPA Act