



Open access information under the GIPA Act – agency requirements

Under the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2018* (GIPA Regulation), all NSW agencies are required to make a range of open access information publicly available, unless there is an overriding public interest against disclosure of the information (OPIAD).

Open access information is to be publicly available free of charge on the agency's website (unless to do so would impose unreasonable additional costs on the agency).

This fact sheet outlines open access for:

1. Ministers
2. Departments
3. Statutory bodies
4. Councils
5. State-owned corporations.

The benefit of open access information

The mandatory public release of open access information under the GIPA Act promotes consistent and transparent information sharing practices across NSW agencies. It provides members of the public with an immediate right of access to important government information.

In line with the object of the GIPA Act,¹ mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair and effective.

It does this by placing the onus on agencies to push information into the public domain and:

- promotes open discussion of public affairs, enhancing government accountability and contributing to informed debate on issues of public importance;

- informs the public about agency operations and their policies and practices for dealing with members of the public; and
- ensures effective oversight of public funds.

What open access information are agencies required to make publicly available?

The GIPA Act defines open access information as²:

- an agency information guide (AIG), describing an agency's structure, functions, how those functions affect the public, the type of information held and how it is made publicly available³. See the Information and Privacy Commission's (IPC) [Guideline 6: Agency Information Guides](#)
- documents tabled in parliament by or on behalf of an agency⁴
- an agency's policy documents that are related to its functions and are likely to affect members of the public such as rules, guidelines, statements of how administered schemes will operate and procedures to investigate contraventions (but are not legislative instruments)⁵
- a disclosure log of information released under formal access applications that may be of general public interest.⁶ See IPC's [Good practice for disclosure logs](#)
- a register of contracts an agency has with private sector entities for \$150,000 (inclusive of GST) or more.⁷ See the IPC's e-learning module, [Contract Registers under the GIPA Act](#)
- a record of the open access information that is not made public due to an overriding public interest against disclosure⁸
- an advertising compliance certificate issued by the head of a government agency under the *Government Advertising Act 2011*.⁹

¹ GIPA Act section 3

² GIPA Act section 18

³ GIPA Act section 20

⁴ GIPA Act section 18(b)

⁵ GIPA Act section 23

⁶ GIPA Act sections 6, 18, 25-26

⁷ GIPA Act section 27

⁸ GIPA Act section 18(f)

⁹ GIPA Regulation clause 4(2)

Some exceptions apply and these are summarised in this fact sheet.

How should open access information be made available?

All open access information must be available free of charge on an agency's website, unless this would impose unreasonable costs. If an agency decides not to make information available for free on its website, at least one alternative method of access must be free of charge. Agencies may charge for open access information only if it is available for free in at least one other format. See the [IPC's Fact Sheet – GIPA Act Fees and Charges](#).

Particular arrangements for open access information are specified for ministers and councils.

Additional requirements on some agencies

Agencies should confirm if they are subject to these requirements by referring to:

- the GIPA Act;
- the GIPA Regulation;
- Schedule 2 to the *Government Sector Finance Regulation 2018*;
- the IPC's Fact Sheet [What is an Agency?](#)

Ministers

Additional open access information for **Ministers** may be made available on the website of the department for which the Minister is responsible¹⁰ and include¹¹:

- any media release the Minister issues; and
- specified details concerning the Minister's overseas travel.

Note: *Ministers and their staff are not required to publish an AIG under the GIPA Act.*

Departments

Additional open access information for **government departments** includes:¹²

- a list of the department's major assets and acquisitions;
- the total number and total value of properties the department disposed of during the previous financial year;
- the department's guarantee of service (if any);
- the department's code of conduct (if any); and

- any standard, code or other publication applied, adopted or incorporated by reference in any Act or statutory rule the Department administers.

Note: *The Department of Industry is not required to include any information in its contracts register about a government contract that involves the provision of industry support.*¹³

Relevant entities

Additional open access information for **relevant entities** (within the meaning of clause 5 of the GIPA Regulation) includes:

- the total number and total value of properties the statutory body disposed of during the previous financial year; and
- the statutory body's guarantee of service (if any).¹⁴

Councils

Additional open access information for **councils** includes:¹⁵

- information about the local authority, such as annual reports (including for bodies exercising functions delegated by the local authority), EEO management plans and any codes referred to in the *Local Government Act 1993*;
- information in returns of interests (pecuniary interests) or other returns filed by councillors or staff;¹⁶
- agendas and papers of council meetings;
- land registers, registers of delegations and current declarations of disclosures of political donations;
- plans and policies such as for approvals, management of community land and environmental planning instruments; and
- information about development applications made on or after 1 July 2010 including associated documents and records of decisions.

The Chief Executive of the Office of Local Government may, in consultation with the Information Commissioner, adopt mandatory provisions for inclusion in council's agency information guides.¹⁷ If so, councils must include the mandatory provision unless the Chief Executive approves otherwise.

A councillor or a designated person must complete a return disclosing their pecuniary interests.¹⁸ These returns must be provided as open access information.¹⁹

¹⁰ GIPA Regulation clause 9

¹¹ GIPA Regulation clause 6(1)

¹² GIPA Regulation clause 6(2)

¹³ GIPA Act section 38

¹⁴ GIPA Regulation clause 6(4)

¹⁵ GIPA Regulation Schedule 1

¹⁶ GIPA Regulation Schedule 1

¹⁷ GIPA Act section 20(3)

¹⁸ *Local Government Act 1993* section 449

¹⁹ GIPA Act section 6 and GIPA Regulation clause 1(2)(a) of Schedule 1

The IPC has provided guidance to councils about how to interpret this requirement in [Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the GIPA Act](#). The guideline assists local councils to determine public interest considerations when deciding whether to disclose information and supplements the GIPA Act.

The IPC has also published [GIPA Guideline 3: For local councils – personal information contained in development applications: What should not be put on council websites](#), as well as resources on copyright and compliance with the GIPA Act to assist councils with meeting their open access information requirements. Councils should refer to the IPC's [GIPA Act and Copyright](#).

In addition to information provided on a website, councils must also make open access information available by:²⁰

- making the information available for inspection free of charge by any person at the office of the Council during ordinary office hours; and
- providing a copy of a record containing the information, or the facilities to make a copy of the record, to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.

A council may archive records that contain open access information in accordance with their record management practices and procedures, but is required to retrieve archived records and make the information available as soon as reasonably practicable after a request for access is made.²¹

State-owned corporations

There are no additional requirements on state-owned corporations.

However, state-owned corporations and their subsidiaries are not required to include any information in their contracts register about a contract that relates to activities engaged in by the corporation or subsidiary in a market in which it is in competition with any other person.²²

Note: *Landcom is not required to include any information in its contracts register about a government contract for the sale of land.*²³

Does the public interest test apply to open access information?

Yes. Sometimes an agency may partially or fully withhold open access information due to an OPIAD. In this case, a record of the open access information it does not make publicly available must be published on the agency's website.²⁴

An agency must facilitate public access to open access information by deleting information from a copy of a record if inclusion of the matter would otherwise result in there being an OPIAD and it is practicable to delete the matter.²⁵

The GIPA Act does not require or permit an agency to make open access information available in any way that would constitute an infringement of copyright.²⁶

Does your agency have a record as required by section 6(5)?

An agency is required to keep a record of any 'open access information' that it does not make publicly available based on an overriding public interest against disclosure.²⁷ Agencies should provide a link to this information on their access to information page on their webpage.

What should a record under section 6(5) include?

The Agency should include the following information which describes the record of open access information that it does not make publicly available:

- Type of Document
- Name of Document
- General description of the document
- Reason for non-disclosure
- Area responsible for the document
- Contact Information of RTI Officer.

Should the record under section 6(5) be reviewed and updated?

Yes. While the GIPA Act does not include any requirements relating to when the record under section 6(5) should be reviewed and updated the Information Commissioner recommends Agencies should have a process in place which results in the record being updated at regular intervals or each time a decision is made not to make open access information publicly available due to an overriding public interest against disclosure.

This process should form part of the agencies broader policies and procedures relating to compliance with the open access information requirements of the GIPA Act.

The requirement to keep a record under section 6(5) is separate to the requirement to have an Agency Information Guide and the requirements relating to the review and adoption of AIGs.

²⁰ GIPA Regulation clause 5

²¹ GIPA Regulation clause 5

²² GIPA Act section 39

²³ GIPA Act section 40

²⁴ GIPA Act sections 6(1), 6(5) and 18(f)

²⁵ GIPA Act section 6(4)

²⁶ GIPA Act section 6(6)

²⁷ GIPA Act section 6(5)

However, an AIG should include details of where the record under section 6(5) can be accessed, if relevant.

What is not open access information?

Open access information does not apply to “excluded information” under the GIPA Act. Excluded information is identified by reference to certain agency functions. Information related to a function is specified in Schedule 2 to the GIPA Act and includes:

- judicial and prosecutorial information of a court or the office of Director of Public Prosecutions;
- complaints handling and investigative information of certain agencies;
- competitive and market sensitive information of certain agencies; and
- other information of specified agencies.

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.