



information
and privacy
commission
new south wales

NSW Office of Sport

GIPA Act compliance review report

October 2018

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1 Purpose

This review examines the systems and processes of the NSW Office of Sport (OoS) in relation to dealing with applications for access to information under the [Government Information \(Public Access\) Act 2009 \(GIPA Act\)](#).

The review was undertaken in accordance with section 17(g) of the GIPA Act to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act. Its purpose is to assess the compliance of the OoS with the GIPA Act in fulfilling its responsibilities under the Part 4 of the GIPA Act. This review was limited to the specific management of the formal access application process under the GIPA Act and did not consider all compliance requirements under the GIPA Act. Specifically, this review assessed compliance with Part 4, Division 2 – Transfer, amendment or withdrawal of access applications; Part 4, Division 3 – Process for dealing with access applications; Part 4, Division 4 – Deciding access applications.

2 Background

In May 2018, the NSW Information Commissioner received a complaint under the *Government Information (Information Commissioner) Act 2009* (GIIC Act) in relation to the way in which the OoS dealt with applications for access to information made by the complainant.

The Information Commissioner decided to deal with the complaint by undertaking a review of the OoS's GIPA Act process in accordance with section 17(g) of the GIPA Act, which provides the Information Commissioner with monitoring, auditing and reporting functions regarding the exercise, by agencies of their functions under, and compliance with, the GIPA Act.

In conducting the review, the Information Commissioner met separately with the Complainant and with a representative of the OoS, and conducted an audit of the OoS's systems and processes for dealing with GIPA applications. This included auditing a sample of recent access applications made under Part 4 of the GIPA Act.

The IPC greatly appreciates the assistance and co-operation provided by the OoS and its officers during the assessment.

This report outlines the findings and proposed recommendations as a result of the IPC's review.

The OoS responded to the draft report on 4 October 2018. In its response, the OoS accepted all recommendations provided in the draft report. The OoS undertook to implement all recommendations that require immediate attention, and to work with the IPC to implement all recommendations.

3 Methodology

3.1 Sample selection

In undertaking this review the IPC attended the offices of the OoS, and was provided access to the OoS's GIPA files, and relevant officers. The time period reviewed by the IPC was from 1 July 2017 until May 2018, inclusive.

The IPC reviewed 7 of the OoS's GIPA files, which were received by the OoS between July 2017 and March 2018.

This should be viewed in the context of the number of GIPA applications received by the OoS, which in the period 2016 – 2017 was 12.¹

3.2 Assessment criteria

In undertaking the review the IPC assessed the OoS's compliance with the GIPA Act against discrete criteria to reflect the issues raised in the complaint and related compliance matters identified by the Information Commissioner. The criteria are set out in the table below.

Assessment Criteria

The assessment criteria covers:
1. GIPA delegations
2. GIPA applications manual
3. GIPA templates
4. Availability of information access guidance
5. GIPA search requirements
6. GIPA case management
7. Scope and assistance
8. Decision making
9. GIPA training and communication

3.3 Conduct of the analysis

The analysis of OoS's compliance was conducted in July 2018. IPC staff examined the OoS's website and GIPA files. The assessment of the files was performed contemporaneously, with data and observations recorded and explanatory material requested and provided where necessary.

4 Findings

The findings of the review are presented below in two parts:

- assessment against select criteria that assist examination of OoS compliance with legislated requirements
- specific comments, findings and recommendations to assist OoS with compliance with legislated requirements.

¹ See: Agency GIPA Dashboard, <https://www.ipc.nsw.gov.au/agency-level-gipa-dashboard>.

The findings include reference to sample files. The IPC recorded and has retained data in relation to each of the sample files, and for the purposes of this report deems it unnecessary to provide a breakdown in relation to each file.

The IPC will continue to assist the OoS as it adopts the recommendations, given the size of the agency and the infrequent nature of GIPA applications.

1. GIPA delegations

Criterion	Result
Documented GIPA delegations in place	Delegations absent

Comments, findings and recommendations

Comment: Section 9(3) of the GIPA Act provides that a reviewable decision may only be made by, or with the authority of, the principal officer of the agency.

Finding: The absence of a written delegation was confirmed by the Manager Executive and Ministerial Support and the Director Executive Services. Officers did confirm that the responsibility for the exercise of GIPA functions is documented within the branch plan.

Recommendation 1: OoS should have in place a written GIPA delegation so as to comply with section 9(3) of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Finding: OoS provides services, under an agreement (SLA), to Venues NSW (a statutory body). The SLA includes processing GIPA applications, providing letters and notifying applicants of the decision. This audit found that GIPA decisions identified officers of the OoS as the decision maker.

Recommendation 2: If determining GIPA matters on behalf of another agency, the OoS should have in place a formal authorisation that addresses the specific decision-making responsibilities and functions to be exercised by the OoS on behalf of the other agency. This should be in place within 4 weeks of receipt of this report.

2. GIPA applications manual

Criterion	Result
Status of GIPA applications manual	Partially complete and not operative

Comments, findings and recommendations

Comment: While a manual on how to manage access applications is not a legislative requirement, agencies often have documentation in place as part of their policies and procedures. A manual is beneficial to agencies supports the effective exercise of GIPA functions, and provides a reference for officers when receiving, processing or deciding access applications. Maintaining currency of policies and procedures assists officers in the exercise of their GIPA functions.

Finding: The IC reviewed templates that the OoS advised were created in 2016 and have not been reviewed since.

Recommendation 3: The OoS should consider reviewing and updating its templates, where

necessary and consolidating all templates into a central resource that is maintained and updated.

Finding: Advice to applicants regarding review rights is a mandatory inclusion in notices to access applicants². The OoS manual includes reference to the inclusion of a fact sheet on review rights, but this is not included as a resource or identified by name.

Recommendation 4: The OoS should consider amending its manual to specify the location and name of the fact sheet regarding review rights for provision to an applicant.

Findings: The OoS has developed a process map, which explains the GIPA process to new staff, and contains step by step procedures, and timeframes for determining the validity of applications and the decision period.

The OoS procedures address communication with the applicant if there is to be a delay or unreasonable & substantial diversion of resources. It also contains information about the consultation process.

Central to the exercise of GIPA Act functions is the application of the public interest test.³ The OoS's manual does not refer to the identification of the public interest test, guidance to support the application of the test, or balancing of the test. It also does not contain reference to the conclusive presumptions against disclosure (COPIADS), how to undertake the assessment, or how to calculate fees and charges in accordance with GIPA Act requirements.

Recommendation 5: The OoS should consider amending its process manual to provide reference to the identification of the public interest test; balancing factors in favour or against disclosure of information; general application of the test; how to undertake the assessment of COPIADS; and how to calculate fees and charges.

Comment: Section 58 of the GIPA Act provides for the ways in which an agency decides an access application.

Finding: The OoS's manual does not contain any reference to section 58 of the GIPA Act. There is insufficient detail to direct officers in how applications are decided, and no reference to where information could be located to inform such decisions.

Recommendation 6: The OoS should consider amending its manual to provide reference to section 58 of the GIPA Act, including how applications are decided and how to locate information to inform such decisions.

Finding: The documentation provided by the OoS notes the existence of a Macquarie University GIPA Process Guide and the IPC Compliance Guide. The OoS relies on templates from the IPC website, and tailors the templates depending on the information applied for in the access application.

Recommendation 7: To update its manual and maximise the opportunity to achieve compliance, OoS should consider using IPC resources. The OoS should also consider utilising any cluster arrangements to assist it in the development of its manual and compliance with the GIPA Act in general.

² Section 126 of the GIPA Act.

³ Section 13 of the GIPA Act.

Finding: The OoS maintains a Running Sheet Template for application flows and a request tracker, which includes details including the applicant, date of application, acknowledgement due date, decision and date of decision, response sent and inclusion in the GIPA Tool. This appeared to be effective, in use, up to date and current.

Recommendation 8: The OoS should continue to utilise its Running Sheet and its request tracker for management of applications.

Comments: Section 53(2) of the GIPA Act provides that an agency must undertake such reasonable searches as may be necessary to find any of the information applied for that was held by the agency when the application was received.

Within agencies an officer processing an access application must at times request other officers or business units to conduct searches for information.

Findings: The OoS's search request template provides guidance, including undertaking a preliminary review of information, a reference to the offence of misleading, and that information may be included in a disclosure log.

However, it appears that a differential approach is applied by the OoS depending on whether a search for information is required of a single business area or multiple business areas.

Recommendation 9: The OoS should ensure that appropriate searches for information are conducted for each access application, and recorded in a search template pursuant to section 53(2) of the GIPA Act.

Recommendation 10: The OoS should ensure that each time a search for information is requested, the officer processing the access application receives written confirmation from the relevant business unit to certify that searches have been conducted and information found or not found.

Recommendation 11: The OoS should review its search template having regard to the guidance issued by the Information Commissioner in the fact sheet: The GIPA Act: Agency systems, policies and practices – guidance for principal officers.

Recommendation 12: The OoS should consider providing in its processes manual, an explanation of a deemed refusal.⁴ This should be completed within 4 weeks of receipt of this report.

Recommendation 13: The OoS should review its existing manual to: consolidate and centralise all of the templates, processes and procedures. The manual would benefit from a link to IPC guidance on fees and charges, guidelines, unreasonable and substantial diversion of resources etc. This should be completed within 8 weeks of receipt of this report.

3. GIPA templates

Criterion	Result
Communication with applicant	In place but could be enhanced
Notice of decision	In place but could be enhanced

⁴ See section 63 of the GIPA Act.

Comments, findings and recommendations

Comment: The OoS demonstrated an understanding of the importance of communicating with access applicants. This included prompt acknowledgement of receipt of an access application.

Finding: The OoS has a number of individual template letters for different decisions, e.g. information not held, info held, and creation of a new record.

Recommendation 14: The OoS should consider including in its acknowledgement letters, a reference to the date of receipt of application. This should be completed within 4 weeks of receipt of this report.

Finding: The OoS's template letter in relation to third party consultation does not distinguish between review rights related to the Disclosure log (pursuant to section 56 of the GIPA Act) and the review rights relevant to the release of information (pursuant to section 126(1)(c) of the GIPA Act).

Recommendation 15: The OoS should amend its third party consultation letter to accord with the requirements of the legislation. This should be in place within 8 weeks of receipt of this report.

Finding: From a sample size of one, the template letter for transfers of applications is not clear as to the audience. It could be construed to be either a letter to the applicant or to the transfer agency.

Recommendation 16: The OoS should amend its letter for transfers of applications. The OoS should consider creating two separate letters: one to the transfer agency and one to the applicant, with appropriate language used in each letter. This should be in place within 8 weeks of receipt of this report.

Comments: Section 90 of the GIPA Act provides that an application for the review of a decision by the Information Commissioner must be made within 40 working days after the notice of decision to which the review relates is given to the applicant.

Section 101 of the GIPA Act provides that an application for NCAT administrative review must be made within 40 working days after notice of the decision to which the review relates is given to the applicant.

Findings: The OoS template decision letter to the access applicant in relation to information held refers to weeks rather than the legislated working days. The OoS template decision letter to applicant in relation to information not held refers to days rather than working days.

Recommendation 17: The OoS template decision letters should be amended to accord with the requirements of section 90 and section 101 of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Comment: Section 51 (2) of the GIPA Act requires an agency to notify the access applicant as to the validity of an application within 5 working days after the application is received. Section 57(1) of the GIPA Act provides that an agency must determine an access application and give the applicant notice of the agency's decision within 20 working days after the agency receives the application. This may be extended under section 57(2) and section 57(4) of the GIPA Act.

Finding: The OoS template acknowledgement letter contains reference to the anticipated decision date.

Recommendation 18: The OoS should amend its template acknowledgement letter to include a determination as to validity and specify the date for the decision in accordance with section 57 of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Finding: The OoS has individual templates in relation to the following types of decisions: information is held; information is not held; creation of a new record.

These letters do not contain reference to the authorisation of the decision maker.

The template letters contain inconsistent references to the review rights, e.g. some refer to weeks, some refer to days. There is no reference to working days as specified under the GIPA Act.

Recommendation 19: The OoS should review its current templates to include a reference to the delegation authority of the decision maker in accordance with section 9(3) of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Finding: The GIPA Act requirements to specifying the timeframe in which a decision will be made was not provided in all correspondence issued by OoS to access applicants.

Recommendation 20: The OoS should consider removing reference to a decision not being made "within promised time". The OoS should include such details on the timeframes for making of decision as are required by the GIPA Act. This includes providing an explanation of a deemed refusal. This should be completed within 4 weeks of receipt of this report.

Comment: The findings set out above and recommendations made in this report to enhance the quality and validity of notices under the GIPA Act demonstrates that a general review and update of all GIPA Act templates is warranted.

Recommendation 21: The OoS should consider a broad review of its templates. Any review could aim for consistency around the language on the review rights available to access applicants. This should be in place within 8 weeks of receipt of this report.

4. Availability of information access guidance

Criterion	Result
Information access guidance available on the Agency's website	In place – required navigation from home page
IPC guidance material on the Agency's website	In place – on Right to Information Policy page

Comments, findings and recommendations

The OoS's website has a link for Information Access, which links to a landing page for the Agency Information Guide that describes the functions and structures, information held, public participation, how to access public information and describes the four pathways. The link to the IPC guidance is only located within the Review Rights section of the 'How to access information'.

The effectiveness and timeliness of agency decision making is informed, in part by the quality of access applications. OoS access applicants may be better served by a more direct and prominent expression of access mechanisms, positioned so as to enhance the quality of their access applications. This approach may also better serve OoS in discharging its responsibilities particularly those arising under section 16 of the GIPA Act.

5. GIPA search requirements

Criterion	Result
Identification of parameters of GIPA application	Inadequate (see Recommendation 9)
Established records storage and retrieval system	Single systems
Identification of business units	Adequate
Referral to business units	Adequate
Retrieval from business units	Adequate
Certification on return by officer conducting search	Inadequate (see Recommendations 10 and 11)

Comments, findings and recommendations

The above findings are based on a review of the 7 sample files actioned in the period between 1 July 2017 and May 2018.

6. GIPA case management

Criterion	Result
Average time from receipt to acknowledgment	2.6 days
Average duration in between communication with applicant	8.4 days
Average timeframe from receipt to finalisation	14.9 days
Average timeframe regarding internal communication	1.7 days
Average number of times followed up from with relevant Business Unit to obtain information or elicit response	0.1 occasions

Comments, findings and recommendations

The above findings are based the review of the 7 sample files. The timeframes demonstrate a positive responsive approach which achieves the timelines anticipated under the GIPA Act.

7. Scope and assistance

Criterion	Result
Appropriate assessment and action in accordance with section 60(4) of the GIPA Act where required	Adequate
Appropriate documenting and filing of telephone and email contacts with the applicant	Adequate

Comments, findings and recommendations

The above findings are based the review of the 7 sample files. The adequacy of these records demonstrates a transparent approach to engagement with access applicants.

8. Decision making

Criterion	Result
Sample met the requirements of section 61 (Notice of decision to refuse access) and section 126 of the GIPA Act (requirements for notices)	57%
Sample met the requirements of section 54 of the GIPA Act to consult when required	57%
Sample reflects proper application of Schedule 1 to the GIPA Act and Schedule 2 to the GIPA Act	71%

Comments, findings and recommendations

The above findings are based the review of the 7 sample files. GIPA Act requirements in relation to provision of notices and consultation are addressed in the body of this report. Schedule 1 and Schedule 2 of the GIPA Act deal with COPIADS and *excluded information*. The application of these factors in deciding access application requires the consideration of preconditions. It was not apparent from the audit that these preconditions were met in all files reviewed. However external review of these decisions by the IPC is not within the jurisdiction of the Information Commissioner in exercising functions under the GIIC Act.⁵

9. GIPA training and communication

Criterion	Result
Frequency of training provided to officers acting under delegation of GIPA functions over the last 2 years	12 months +
Frequency of training provided to officers responding to GIPA requests for information over the last 2 years	Nil
Frequency of communications provided over the last 2 years to officers performing GIPA functions under delegation regarding GIPA	Nil
Frequency of communications provided over the last 2 years to officers responding to GIPA requests for information	Nil

⁵ Section 17 of the GIIC Act.

Comments, findings and recommendations

Findings: Manager Executive and Ministerial Support advised that she has completed the Crown Solicitor's Office's Intermediate and Advanced GIPA training. The officer also advised that she infrequently attends GIPA Practitioners' Network meetings.

Recommendation 22: The OoS should ensure that training is provided to all officers who are or will have responsibility for processing access applications.

Findings: There is no mechanism present for communicating relevant information to officers responding to requests for searches for information.

Recommendation 23: The OoS should ensure suitable training and awareness for all officers requested to search for information in response to an access application.

5 Conclusions and Recommendations

Overall, it was evident that the OoS responds in a timely manner to access applicants. Officers of the OoS also expressed an eagerness to improve the way that they deal with access applications.

However, the systems and processes showed that improvements could be made to the way that the OoS handles access applications. In particular, the OoS should have in place a written delegation; its templates should be amended; and ongoing training should be provided for officers processing applications and conducting searches.

5.1 Recommendations

Based on the findings of this review, it is recommended that the OoS implement the following recommendations within the timeframes specified:

Recommendation 1: The OoS should have in place a written GIPA delegation so as to comply with section 9(3) of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Recommendation 2: If determining GIPA matters on behalf of another agency, the OoS should have in place a formal authorisation that addresses the specific decision-making responsibilities and functions to be exercised by the OoS on behalf of the other agency. This should be in place within 4 weeks of receipt of this report.

Recommendation 3: The OoS should consider reviewing and updating its templates, where necessary and consolidating all templates into a central resource that is maintained and updated.

Recommendation 4: The OoS should consider amending its manual to specify the location and name of the fact sheet regarding review rights for provision to an applicant.

Recommendation 5: The OoS should consider amending its process manual to provide reference to the identification of the public interest test; balancing factors in favour or against disclosure of information; general application of the test; how to undertake the assessment of COPIADs; and how to calculate fees and charges.

Recommendation 6: The OoS should consider amending its manual to provide reference to section 58 of the GIPA Act, including how applications are decided and how to locate information to inform such decisions.

Recommendation 7: To update its manual and maximise the opportunity to achieve compliance, OoS should consider using IPC resources. The OoS should also consider utilising any cluster arrangements to assist it in the development of its manual and compliance with the GIPA Act in general.

Recommendation 8: The OoS should continue to utilise its Running Sheet and its request tracker for management of applications.

Recommendation 9: The OoS should ensure that appropriate searches for information are conducted for each access application, and recorded in a search template pursuant to section 53(2) of the GIPA Act.

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Recommendation 19: The OoS should review its current templates to include a reference to the delegation authority of the decision maker in accordance with section 9(3) of the GIPA Act. This should be in place within 4 weeks of receipt of this report.

Recommendation 20: The OoS should consider removing reference to a decision not being made "within promised time". The OoS should include such details on the timeframes for making of decision as are required by the GIPA Act. This includes providing an explanation of a deemed refusal. This should be completed within 4 weeks of receipt of this report.

Recommendation 21: The OoS should consider a broad review of its templates. Any review could aim for consistency around the language on the review rights available to access applicants. This should be in place within 8 weeks of receipt of this report.

Recommendation 22: The OoS should ensure that training is provided to all officers who are or will have responsibility for processing access applications.

Recommendation 23: The OoS should ensure suitable training and awareness for all officers requested to search for information in response to an access application.

5.2 Monitoring

The IPC will continue to assist the OoS as it adopts these recommendations. The IPC proposes to monitor the OoS's compliance with the GIPA Act by conducting a similar high-level audit within 12 months from the date of this report.

The OoS is asked to report to the Information Commissioner quarterly on the implementation of the recommendations made arising from this review. The reporting period should commence from the end of November 2018.



information and
privacy commission

new south wales

www.ipc.nsw.gov.au

Level 17, 201 Elizabeth Street, Sydney 2000

GPO Box 7011, Sydney NSW 2001

1800 IPC NSW (1800 472 679)

Fax: (02) 8114 3756

ipcinfo@ipc.nsw.gov.au

www.ipc.nsw.gov.au

Our business hours are 9am to 5pm
Monday to Friday (excluding public holidays)