



information
and privacy
commission
new south wales

WaterNSW review

October 2018



1 Purpose

This review examined WaterNSW's compliance with the *Government Information (Public Access) Act 2009* (GIPA Act) following a complaint under the *Government Information (Information Commissioner) Act 2009* (GIIC Act) and relevant transfer of a discrete set of functions from Department of Industry – Water (DPI – Water) to WaterNSW in 2016.

This 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.

The IPC reviewed WaterNSW's management of its records in response to access applications, in particular: its search processes, records retrieval and transfer of access applications to another agency when required.

2 Background

On 20 September 2017, the IPC received a complaint from Mr Chris Minns, MP about WaterNSW's conduct in the exercise of its functions in dealing with his access application under the GIPA Act. Central to the complaint was an agency initiated transfer of the access application to DPI – Water.

The IPC conducted preliminary inquiries with WaterNSW. WaterNSW advised that:

- As a result of a deed of business transfer entered into towards the end of 2016, there remained uncertainty as to the breakdown of functions and records management between it and DPI – Water.
- This uncertainty impacted on the processing of Mr Minns' access application, as WaterNSW did not initiate a transfer to DPI – Water as it was unclear as to what agency held certain information, as requested in the access application.

- WaterNSW contended that it could not transfer part of the access application, as the GIPA Act does not allow for a partial transfer of an access application.

Following these preliminary inquiries, the IPC met with WaterNSW in December 2017 to discuss the issues raised in the complaint, the management of access applications and the division in functions and transfer of records between WaterNSW and DPI – Water.

WaterNSW advised that:

- A transfer of records from DPI – Water was in progress at the time of the application; and
- A decision was made not to transfer the access application to DPI – Water until all searches had been sufficiently undertaken. The search process involved contacting various (including new) staff members within WaterNSW.
- There were different record management systems between itself and DPI – Water, including its electronic record management system and physical files.
- Following the transfer of functions from DPI – Water to WaterNSW, WaterNSW staff travelled to regional offices to ensure that relevant files were transferred accordingly. A change in staff and loss of corporate knowledge (as not all relevant staff moved from DPI – Water to WaterNSW), has contributed to the uncertainty as to the location of records that may have fallen within the scope of Mr Minns' access application.
- The licensing function is one of the main functions now handled by WaterNSW and it has been in the process of ensuring that records relating to the licensing function were transferred from physical to electronic files.
- Since the transfer of functions, most of the relevant physical files have been uploaded to WaterNSW's electronic record management system.

The IPC further wrote to WaterNSW in March 2018 advising that following inquiries and having considered all information available to the IPC, the

Information Commissioner had formed the view that while the steps taken by WaterNSW were adequate, it would be appropriate for the IPC to provide assistance to WaterNSW with the lodging, handling and processing of access applications in accordance with section 17(c) of the GIPA Act.

The Information Commissioner advised that the IPC would conduct a further review of WaterNSW's exercise of its functions and compliance with the GIPA Act. This included a proposal to further monitor the exercise of functions by WaterNSW in accordance with section 17(g) of the GIPA Act and evaluate the effectiveness of WaterNSW's systems, policies and practices.

The IPC's monitoring had particular regard to:

- Records management within WaterNSW as relevant to the exercise of GIPA functions
- Management of access applications including process and policies to support:
 - amendment of an access application
 - extensions to the timeframe to decide access applications
 - processing access applications and conducting searches
 - agency training and guidance

The Information Commissioner's review aimed to ensure WaterNSW's exercise of its functions was in compliance with the GIPA Act.

WaterNSW responded to the draft report of this review on 12 October 2018. That response has informed the finalisation of the report.

3 Findings and recommendation

In May 2018, the IPC wrote to WaterNSW notifying the agency of its intention to conduct a further review in accordance with section 17(g) of the GIPA Act. In June 2018, the IPC met again with WaterNSW. The IPC's review identified that WaterNSW had a detailed management approach in relation to its handling of access applications. An update was also provided on the [roles](#) of the different water management agencies within NSW and how this impacts on the processing of access applications.

Records management within WaterNSW

WaterNSW uses an electronic records management system that records all access applications. Emails are managed in Outlook and saved electronically in each access application file on the electronic records management system.

The transfer and centralisation of all physical files from DPI – Water to WaterNSW is nearing completion. To locate and collect relevant files, WaterNSW staff travelled to offices throughout NSW, initially focusing on larger offices including: Parramatta, Dubbo, Newcastle, Yanco/Leeton, Newcastle and Tamworth. The location of files is now recorded in the electronic records management system.

It was also confirmed that a further records transfer will occur with the assignment of the compliance and enforcement functions to the Natural Resources Assets Regulator (NRAR).

Management of access applications

The IPC review identified that one staff member has main carriage for performing the functions under the GIPA Act (with administrative support). The staff member maintains a spreadsheet and also uses Outlook calendar appointments to ensure that all timeframes are met. This arrangement assists with the timely follow up to business units regarding the completion of any

tasks in relation to an access application, including search certification.

It was observed that WaterNSW receives access applications via email and post. Most applications are received via email, however, currently the application fee must be received by cheque or money order. WaterNSW advised that it was currently assessing BPAY functionality to allow for the electronic processing of payment.

It does not appear that from a review of the information held by the IPC that WaterNSW has applied to the Information Commissioner for approval of additional facilities for the payment of application fees (pursuant to section 41(h) of the GIPA Act).

WaterNSW has also advised that it will seek approval from the Information Commissioner in due course if and when the BPAY functionality is pursued.

Once an access application is received by WaterNSW, it is logged onto the electronic records management system and given a reference number. This ensures that the application is accessible by relevant staff in the business unit.

After receipt of an access application, an acknowledgment is sent to the applicant and a decision date is also provided. Unless indicated otherwise by the applicant, all responses are via email.

The IPC also observed that WaterNSW's intranet will soon have functionality to allow electronic reminders to be generated and sent directly to the business units and the manager of the unit regarding any outstanding tasks, including the return of the search certificates.

It was also identified that WaterNSW uses the IPC's GIPA Tool to comply with legislation when processing and reporting on access applications.

It is the IPC's view that WaterNSW's systems and processes used in the handling of access applications comply with the requirements of the GIPA Act.

Amendment of an access application

Following its inspection the IPC is satisfied that if an access application is considered to be too

broad, WaterNSW contacts the applicant and invites them to amend the scope in accordance with sections 16 and 52 of the GIPA Act.

Extensions to the timeframe to decide access applications

The IPC identified that extensions were generally required for consultation with third parties in relation to access applications. The IPC observed that it is the practice of WaterNSW to advise the applicant that a consultation process is to be undertaken and the timeframe in which this will be completed. This accords with section 57 of the GIPA Act

Policies for processing access applications

During the IPC review, it was observed that WaterNSW was developing an internal Information Assurance Framework. This Framework captures the access application process. This includes a verification procedure which must be followed to collate, review, verify and produce information the subject of an access application. A verification record containing internal guidance outlining the: different roles of those involved in the search and the requirements for preparation and verification of information in response to an access application.

This guidance also includes recording the processing time, records a list of documents identified through the search process and public interest considerations listed in the table to section 14 of the GIPA Act. Notices of decision are prepared by the relevant officer and signed by the CEO.

Conducting searches

The search process adopted by WaterNSW was considered. The search process includes:

- An assessment of the information requested in the access application. This assists with identifying the appropriate business unit/s that may hold the information.
- A search certificate, along with the access application, is sent to the business units. The search certificate is a template the business units are required to complete outlining the searches undertaken.

- Attaching the access application assists the business unit when deciding on the key search terms to be used, as the unit can review the original request for information.

WaterNSW inclusion of a search certificate accords with the guidance issued by the Information Commissioner in March 2018 [The GIPA Act: Agency systems, policies and practices – guidance for principal officers](#)

This guidance outlines the importance of appropriate record keeping, certification of searches and search processes within an agency.

It was observed that in circumstances where WaterNSW is unclear as to what business units may hold the requested information, the search request will be sent across multiple business units. A search in the business unit will encompass current and saved emails (including those held by former employees), physical files and information held in the electronic records management system

The search certificate is signed by the staff member in the relevant business unit and their manager. The manager reviews the accuracy of the search and can make recommendations as to whether other areas may need to be searched, if relevant, before returning the search certificate. This practice is commended.

Transferring access applications

The IPC confirmed that the transfer of access applications from one agency to another must accord with the requirement of the GIPA Act and that the practices adopted by WaterNSW accord with those requirements.¹

It was confirmed that following Mr Minn's complaint, WaterNSW now informally liaises with other agencies if it appears that information subject to an access application may be held by that agency and not WaterNSW.

It was identified that if information in relation to an access application has to be transferred to another agency, WaterNSW will advise the applicant. Similarly, if the information is part held by

WaterNSW and another agency, WaterNSW will advise the applicant

and suggest they submit an access application to that agency for that information.

WaterNSW advised the IPC that it continues to review its policies and procedures to include processes for liaising with other agencies regarding the transfer of access applications, in particular with the Department of Industry and NRAR.

Agency training and guidance

The IPC's review identified that relevant WaterNSW staff have attended training with the Crown Solicitor's Office about the GIPA Act.

As part of the internal Information Assurance Framework, it was identified that key staff will be trained in the requirements of the Framework, including processes around accuracy and timeframes.

For all staff, information about the Framework will be delivered through an online format. This is to ensure that all staff are aware of their responsibilities regarding accuracy when providing information.

In addition, it was identified that a fact sheet regarding requests for information under the GIPA Act was sent to all staff and is also available on the agency's intranet. There is the 'How WaterNSW deals with external requests for information' internal guideline which is periodically reviewed when changes within WaterNSW take place.

In June 2018, WaterNSW published '[Roles of water management agencies in NSW](#)'. This outlines the roles of each of four agencies responsible for developing and implementing the regulatory framework for water management in regional NSW: Department of Industry, WaterNSW, NRAR and Office of Environment and Heritage

¹ GIPA Act Part 4 Division 2

Recommendations

The IPC makes the following recommendations:

- Where relevant, WaterNSW requests approval from the Information Commissioner for additional facilities for the payment of an application fee, pursuant to section 41(2) of the GIPA Act (BPAY functionality)
- WaterNSW circulate to staff the IPC fact sheet [Quick guide to responsibilities under the GIPA Act](#).
- In light of the report *Water: compliance and enforcement: A special report to Parliament under section 31 of the Ombudsman Act 1974* issued by the NSW Ombudsman on 17 August 2018, the IPC recommends that WaterNSW review its policies and procedures regarding record keeping and management, in particular, to include any processes around liaising regarding the transfer of access applications.

WaterNSW has advised the IPC that it supports the outcomes of the review and the recommendations. It is preparing to distribute the IPC fact sheet *Quick guide to responsibilities under the GIPA Act* to all staff. WaterNSW also advised the IPC that it remains committed to the open and transparent application of the GIPA Act and to ensuring a timely and effective process through continuous improvement and assessment.