



Environmental Defenders Office

Accessing Government Information in NSW

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While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet provides information on how to access information held by the NSW Government. It is useful for anyone who wants to apply for information or seek a review of a decision made to withhold access to information.

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Overview

Public access to information held by government departments is important in promoting open, accountable government. Access to NSW Government information is governed by the [Government Information \(Public Access\) Act 2009 \(NSW\)](#) (**GIPA Act**).

The Information Commissioner is responsible for promoting the objectives of the GIPA Act, and to provide information, advice and assistance to the public on any matters relevant under that Act.¹ The Information and Privacy Commission NSW (**IPC**) is an independent agency that supports the Information Commissioner with its responsibilities under the GIPA Act. The IPC can provide advice directly to the community about accessing information, has the power to review decisions made by government agencies, and can deal with complaints.

Visit: The IPC [website for more information](#).

¹ GIPA Act, s 17.

Your right to access information

There are four different ways to obtain information from NSW Government agencies:

1. Mandatory proactive release – certain information *must* be disclosed to the public free of charge;²
2. Authorised proactive release – some information *may* be disclosed to the public free of charge (or for lowest reasonable cost);³
3. Informal release – members of the public can ask a government agency for certain information and such requests *may* be considered by that agency;⁴ and
4. Formal release – any person may make a formal application for information and such applications *must* be considered by a government agency.⁵

Each of the above methods to obtain information are subject to public interest considerations, meaning the information may be withheld on the grounds that disclosure is not in the public interest.

Access to information held by the Australian Government

Access to Australian (Commonwealth) Government information is governed separately.

For example, if you are seeking access to information about the Federal Government's approval of an action impacting a matter of national environmental significance, e.g. nationally listed threatened species, you need to follow the process set out under the *Freedom of Information Act 1982* (**FOI Act**).

Visit: Our website for information on [accessing Australian Government Information](#).

Access to information held by the NSW Government

Mandatory proactive release

Information that is classified as “open access information” *must* be made publicly available free of charge, unless there is an overriding public interest against disclosure.⁶

Certain information held by government agencies is assumed to be “open access information”, including:⁷

- The agency's current agency information guide;
- information about an agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament;

² GIPA Act, s 6.

³ GIPA Act, s 7.

⁴ GIPA Act, s 8.

⁵ GIPA Act, s 9.

⁶ GIPA Act, s 6(1).

⁷ GIPA Act, s 18.

- an agency's policy documents;
- an agency's disclosure log of access applications;
- an agency's register of government contracts;
- an agency's record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure;
- government information as may be prescribed by the regulations as open access information.

Similarly, certain information held by local councils is deemed to be open access information, including:⁸

- information about a local council;
- plans and policies;
- information about development applications and approvals, including associated documents such as environmental assessment reports, town planner reports, etc, and;
- approvals, orders and other documents.

Authorised proactive release

For information that is not deemed to be open access, government agencies and local councils may decide to make information publicly available anyway.⁹ This is known as authorised proactive release. Information released this way may be free of charge or at the lowest reasonable cost.¹⁰

At least once a year, NSW Government agencies are required to review their program for the authorised proactive release of government information to identify the kinds of information held that should, in the public interest, be made publicly available.¹¹

Informal release

Informal requests can be made in relation to specific information. This is done by contacting the agency and asking for the information (in a manner that is not an "access application" (see below)).¹² An agency is neither required to consider an informal request nor required to provide information in response to an informal request.¹³

Formal release

Any person may make a formal access application to a NSW government agency for information held by that agency. If you make a formal access application, you have a legally enforceable right to be provided with access to that information, unless there is an overriding public interest against disclosure.¹⁴

To make a formal application for information, you must:¹⁵

⁸ *Government Information (Public Access) Regulation 2018 (GIPA Regulation)*, Sch 1.

⁹ GIPA Act, s 7(1).

¹⁰ GIPA Act, s 7(2).

¹¹ GIPA Act, s 7(3).

¹² GIPA Act, s 8.

¹³ GIPA Act, s 8(3).

¹⁴ GIPA Act, s 9.

¹⁵ GIPA Act, s 41(1).

- make the application in writing and send it to the agency concerned;
- indicate that you are making an access application under the GIPA Act;
- accompany your application with a \$30 fee;
- state your name (or your organisation's name) and a postal or email address as the address for correspondence in connection with your application; and
- include such information as is reasonably necessary to enable the government information applied for to be identified.

Your access application cannot be made in relation to excluded information.¹⁶ Excluded information includes particular information relating to court proceedings, complaints handling and investigative information, market sensitive information of particular agencies and other information outlined in Schedule 2 of the GIPA Act.

The agency may action your application by:¹⁷

- deciding to provide access to the information;
- deciding that the information is not held by the agency;
- deciding that the information is already available to the applicant;
- deciding to refuse or provide access to the information because there is an overriding public interest against disclosure of the information;
- deciding to refuse to deal with your application; or
- deciding to refuse to confirm or deny that information is held by the agency because there is an overriding public interest against disclosure of information confirming or denying that fact

A decision may involve one or some combination of the above reasons.

Timeframes

Prior to making a decision on your access application, the agency must, within 5 working days, first decide whether the application was made validly and notify you of that decision.¹⁸ If the agency decides your application was valid, that agency must then make the decision on your access application (i.e., whether or not to grant access to the information sought) within 20 working days after the agency receives the application.¹⁹ This can be extended in certain circumstances (such as by agreement between you and the agency).²⁰

If an agency does not make a decision on your access application within time, the agency is deemed to have decided to refuse to deal with your application and any application fee paid by you is to be refunded.

Charges

In addition to the \$30 fee that accompanies your access application, an agency may decide to impose a processing charge for dealing with your access application at a rate of \$30/hour for each

¹⁶ GIPA Act, s 43.

¹⁷ GIPA Act, s 58.

¹⁸ GIPA Act, s 51.

¹⁹ GIPA Act, s 57(1).

²⁰ GIPA Act, s 57(4).

hour of processing time for your application.²¹ The \$30 application fee will count as a payment towards any processing charge payable,²² and the first 20 hours of processing time is waived if your access application is for personal information about you.²³ Notice of a decision to provide access to information must state whether any processing charges will be payable and indicate how those charges have been calculated.²⁴

An agency may require (with at least four weeks' advance notice)²⁵ that you pay an advance deposit on any applicable processing fee.²⁶ This is capped at 50% of the estimated total processing charge.²⁷

It is important that your access application clearly indicate what information is being sought. If your application is terms that are too broad, it may add to any applicable processing fee (or even give grounds for the agency to refuse to deal with that application on the basis that dealing with that application would require an "unreasonable and substantial diversion of the agency's resources").²⁸

An agency has the discretion to waive, reduce or refund any fee or charge payable or paid under the GIPA Act in any case that the agency thinks fit.²⁹ You may also be entitled to a 50% reduction in processing fees if:

- you are suffering financial hardship;³⁰ and/or
- your application is for information that is of special benefit to the public generally.³¹

Additionally, an agency must reduce any applicable processing charge under the GIPA Act if you provide evidence that you are:

- the holder of a Pensioner Concession card issued by the Commonwealth that is in force;
- a full-time student, or
- a non-profit organisation (including that you are a person applying for or on behalf of a non-profit organisation)

Refusal of access

Agency may refuse to deal with application

An agency may refuse to deal with your access application for any of the reasons set out in s 60 of the GIPA Act. These include that:³²

- dealing with the application would require an unreasonable and substantial diversion of the agency's resources;

²¹ GIPA Act, s 64.

²² GIPA Act, s 64(3).

²³ GIPA Act, s 67.

²⁴ GIPA Act, s 62.

²⁵ GIPA Act, s 68(3)

²⁶ GIPA Act, s 68.

²⁷ GIPA Act, s 69(1).

²⁸ GIPA Act, 60(1)(a).

²⁹ GIPA Act, s 127.

³⁰ GIPA Act, s 65.

³¹ GIPA Act, s 66.

³² GIPA Act, s 60(1).

- the agency has already decided a previous application for the information concerned and there are no reasonable grounds for believing that the agency would make a different decision;
- you have previously been provided with access to the information;
- you have failed to pay an advance deposit that is payable in connection with the application;
- the information is or has been the subject of a subpoena or other order of a court and is already available to you as a result; or
- you, or a person acting in concert with you, are a party to current proceedings before a court and are able to apply to that court for the information.

If an agency decides to refuse to deal with your access application, they must notify you and include the agency's reasons for refusal.³³ An agency must also give you a reasonable opportunity to amend your access application before refusing to deal with it on the basis that it would require an unreasonable and substantial diversion of an agency's resources.³⁴

Agency may refuse access to information on the basis that there is an overriding public interest against disclosure

All NSW Government agencies must disclose or release information unless there is an overriding public interest against disclosure.³⁵ There is a presumption that there is a general public interest in favour of the disclosure of government information,³⁶ and the GIPA Act does not limit the public interest considerations that can be taken into account when considering whether to disclose that information.

The GIPA Act does, however, provide that there is an overriding public interest against disclosure if:

- the information is information described in Schedule 1 of the GIPA Act (which includes information relating to law enforcement, subject to legal professional privilege, certain Aboriginal and environmental heritage, care and protection of children and more); and/or
- there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

The public interest considerations against disclosure are outlined in the Table of s 14 of the GIPA Act and include information that will affect responsible and effective government, law enforcement and security, individual rights, judicial processes and natural justice, business interests of agencies and other persons, environment, culture, economy and general matters, secrecy provisions and exempt documents under interstate Freedom of Information legislation.

When deciding whether to release information, an agency will apply the above test and weigh the factors in favour of disclosure against those against.

³³ GIPA Act, s 60(5).

³⁴ GIPA Act, s 60(4)

³⁵ GIPA Act, ss 6-9.

³⁶ GIPA Act, s 12.

Your right to seek a review

You can seek a review of decisions made in relation to your access application. These include (but are not limited to) decisions:³⁷

- to refuse access to information;
- to refuse a reduction in the processing charge;
- to refuse to confirm or deny that information is held by the agency; and
- that government information is not held by the agency.

There are three options for review of a government agency's decision:

- internal review
- external review by the Information Commissioner; and
- review by the NSW Civil and Administrative Tribunal (**NCAT**).

Internal review

If you have made an access application, and have received a decision that is capable of review (see the list of reviewable decisions at [s 80 of the GIPA Act](#)), you may request a review of that decision by that agency (by a person other than the decision maker and by someone no less senior than the original decision-maker).³⁸ An application for internal review costs \$40 (unless waived)³⁹ and must be submitted to the agency within 20 working days of receiving notification of the decision (or 20 working days after a deemed refusal – see above under *Timeframes*).⁴⁰ An agency can agree to accept an application for internal review out of time.⁴¹

Agencies are required to complete internal reviews within 15 working days of receiving the application for review, however this period may be extended.⁴²

Internal review is not available for decisions:

- made by the principal officer of the agency or a Minister (or a member of the Minister's personal staff);⁴³
- that have been the subject of review by the Information Commissioner;⁴⁴
- that have been the subject of an administrative review by NCAT;⁴⁵ or
- that have already been subject to an internal review.⁴⁶

³⁷ GIPA Act, s 80.

³⁸ GIPA Act, ss 82 and 84(2).

³⁹ GIPA Act, s 85(1).

⁴⁰ GIPA Act, s 83(1).

⁴¹ GIPA Act, s 83(2).

⁴² GIPA Act, s 86.

⁴³ GIPA Act, s 82(2).

⁴⁴ GIPA Act, s 82(4).

⁴⁵ GIPA Act, s 82(5).

⁴⁶ GIPA Act, s 88.

External review by the Information Commissioner

External review is available to you if you have received a decision that is a reviewable decision under s 80 of the GIPA Act if it has been the subject of an internal review by the agency⁴⁷.

If you are the access applicant, you do not have to seek internal review of the decision before seeking external review by the Information Commissioner. If you are not the access applicant, you must first seek internal review (if internal review is available).⁴⁸

The Information Commissioner does not just review the reasons given by the agency, but rather will interrogate the correct or preferable decision in the circumstances.

However, it is important to note that if the Information Commissioner finds that the original decision was not correct in law or not the preferable decision, the Information Commissioner can only make a recommendation to the relevant agency about the decision. While this can include a recommendation that the agency reconsider and make a new decision on the access application,⁴⁹ the Information Commissioner will not substitute an access application decision with its own decision.

You have 40 working days after receiving notification of the decision to submit an application to the Information Commissioner to review a decision.⁵⁰ Unlike internal review, there are no provisions in the GIPA Act that allow the Information Commissioner to accept an application for external review out of time.

A decision is not to be the subject of review by the Information Commissioner under this Division if the decision is or has been the subject of an administrative review by NCAT.⁵¹

Visit: The IPC page on [lodging an application for a review of a government information access decision](#) for more information on internal reviews and reviews by the Information Commissioner.

Review by the NSW Civil and Administrative Tribunal

An application may be made to NCAT for the review of internal review decisions made by an agency, or decisions made by the Information Commissioner.⁵²

If you are the original access applicant, you do not have to seek internal review of the decision before seeking review by NCAT. If you are not the original access applicant, you must first seek internal review (if internal review is available). Whether you are the original access applicant or not, you do not need to have the decision reviewed by the Information Commissioner before applying for review by NCAT.

⁴⁷ GIPA Act, s 89(2).

⁴⁸ GIPA Act, s 89(2).

⁴⁹ GIPA Act, s 93(1).

⁵⁰ GIPA Act, s 90.

⁵¹ GIPA Act, s 98.

⁵² GIPA Act, s 100.

You must apply to NCAT within 20 working days after the day you receive the Information Commissioner's review,⁵³ or within 40 working days after notice of the decision of an agency.⁵⁴ NCAT may extend this time if it is of the opinion that you have provided a reasonable excuse for the delay in making the application for review.⁵⁵

There are various fees associated with NCAT reviews. More information about these fees is available at the [NCAT website](#).

Orders to produce documents (Standing Order 52)

Outside of the GIPA Act process, there is another mechanism that can bring government-held documents into the public space, known as an order for the production of documents, or Standing Order 52. This is a mechanism used by the NSW Legislative Council to obtain information held by the Executive Government.

It differs from a GIPA application in many ways, it can only be used by members of the House of Parliament to receive information, rather than ordinary members of the public. Additionally, unlike the GIPA process, there are no exemptions as to the type of information for which the House can seek.

However, a key similarity between this mechanism and the GIPA Act process is that once the information is "tabled" pursuant to Standing Order 52, it will be considered to be public and will be available at the [Order for papers page](#) or at the Council's Procedure Office (the details of which are available [here](#)), unless a claim of privilege is made. Privilege is not defined by statute but is generally understood to mean the information is subject to legal professional privilege or public interest immunity.⁵⁶

The process for commencing an order to produce documents is by a member of the House proposing a motion for an order for papers. If the motion is agreed to by the House, the terms of that order are communicated by the Clerk to the Secretary of the Department of Premier and Cabinet, who then coordinates the preparation of the information sought. The Clerk will table the documents in the House, unless a claim for privilege is made. Claims of privilege may be disputed by any member of the Council and an independent legal arbiter (who must be a retired Supreme Court Judge, Queen's (or King's) Counsel or Senior Counsel) will evaluate the claim for privilege.

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If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

⁵³ GIPA Act, s 101(2).

⁵⁴ GIPA Act, s 101(1).

⁵⁵ GIPA Act, s 101(4).

⁵⁶ See: NSW Legislative Council Practice, Chapter 17, available at [https://www.parliament.nsw.gov.au/lc/Documents/18%20NSW%20LC%20Prac%20Ch17%20\(press\).pdf](https://www.parliament.nsw.gov.au/lc/Documents/18%20NSW%20LC%20Prac%20Ch17%20(press).pdf); and NSW Legislative Council, Principles articulated by the Independent Legal Arbiters: The Hon Keith Mason AC QC The Hon J C Campbell QC, October 2020, available at <https://www.parliament.nsw.gov.au/lc/Documents/Principles%20articulated%20by%20the%20Independent%20Legal%20Arbiters%20-%20October%202020.pdf>.

