

## Government Information (Public Access)

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### Policy Statement

Members of the public have an enforceable right to access Government information under the *Government Information (Public Access) Act 2009* (GIPA Act).

All information contained in a record held by the NSW Department of Industry is considered to be government information and subject to the requirements of the GIPA Act.

There is a presumption in favour of disclosure under at least one of the four modes of release prescribed by the GIPA Act unless there is an overriding public interest against disclosure.

### Scope

This policy applies to the NSW Department of Industry.

### Requirements

The GIPA legislation encourages the disclosure of a broad range of information. The four modes of release specified in the GIPA Act are:

1. *Mandatory Proactive Release* - specified information which must be made available on a Departmental website
2. *Authorised Proactive Release* - information voluntarily made available, generally on a relevant website
3. *In response to an Informal Request* - requested information may be voluntarily released
4. *In response to a Formal Access application* - information must be released unless there is an overriding public interest against disclosure under s14 of the GIPA Act

### Procedures

The [Government Information \(Public Access\) Procedures](#) detail the requirements and considerations applicable to each of the four modes of release. There are specific legislated requirements in the GIPA Act concerning Formal Access Applications, the Mandatory Proactive Release of prescribed information and the program for Authorised Proactive Release of information.

### Roles and responsibilities - Formal Access Applications

- All Staff: Conduct searches for records held within the scope of applications received where they have been requested to do so, and advise if they are aware of any other areas which may also have relevant records which have not been included in the search request.
- Senior Managers: Ensure appropriate searches are undertaken and complete the GIPA Search and Certification Forms to confirm all relevant information has been provided to the Governance and Information Requests Unit, and that information that is contentious or for which there may be a public interest against disclosure has been identified.

Senior Managers are also to ensure the Executive and Minister are appropriately informed and kept advised of sensitive GIPA matters and information potentially to be made publically available.

- Governance & Information Requests Unit: Is responsible for processing Formal Access Applications, liaising with the relevant Senior Managers and making decisions in accordance with the GIPA Act.

### **Roles and Responsibilities - Mandatory Proactive Release**

- Managers at Director level and above are to actively and regularly consider and review information held within their area of responsibility, and as records and documents are received or created, to determine if it is Open Access Information and therefore subject to the Mandatory Proactive Release Provisions under s6 of the GIPA Act.
- Staff accepting or issuing Government Contracts valued at \$150,000 or more: ensure the relevant details are included in the Register of Government Contracts.
- Open Access Information **must** be made publicly available unless there is an overriding public interest against disclosure.

### **Roles and responsibilities - Authorised Proactive Release Program**

- Managers at Director level and above are to actively and regularly consider and review information held within their area of responsibility, and as records and documents are received or created, to determine if it is suitable for Authorised Proactive Release under s7 of the GIPA Act.
- A certification will be sought at least annually from Managers at Director level and above that they have reviewed information for which they are responsible for suitability for Authorised Proactive Release.

### **Delegations**

- Legal Officers within the Legal Service Branch may make decisions concerning Formal Access applications under s9 of the GIPA Act.
- Managers at Director level and above may authorise the proactive release of Government Information and release information in response to Informal Requests under ss7-8 of the GIPA Act. They may also make decisions concerning Formal Access applications under s9 of the GIPA Act where these have been referred by the Governance & Information Requests Unit for their action.
- Officers in the Governance & Information Requests Unit may release information in response to Informal Requests and make decisions concerning Formal Access applications under ss8-9 of the GIPA Act.
- Staff members receiving enquiries and Informal Requests from members of the public, other than Parliamentary Members or the Media, may disclose non-contentious information within their area of responsibility not affecting the affairs of any identifiable third parties under s8 of the GIPA Act.

### **Definitions**

- Senior Managers: are the Secretary; Deputy Secretaries; the Director General DPI and; managers directly reporting to them.
- Open Access Information is:
  - (a) the agency's information guide ,
  - (b) information about the 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,
  - (c) the agency's policy documents,
  - (d) the agency's disclosure log of access applications,
  - (e) the agency's register of government contracts ,
  - (f) the agency's record of open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure,
  - (g) an advertising compliance certificate issued by the Secretary under the Government Advertising Act 2011.
- The Agency Information Guide:
  - (a) describes the structure and functions of the agency, and

- (b) describes the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public, and
- (c) specifies any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions, and
- (d) identifies the various kinds of government information held by the agency, and
- (e) identifies the kinds of government information held by the agency that the agency makes (or will make) publicly available, and
- (f) specifies the manner in which the agency makes (or will make) government information publicly available, and
- (g) identifies the kinds of information that are (or will be) made publicly available free of charge and those kinds for which a charge is (or will be) imposed.

- **Policy Documents:** An agency's policy documents are those used in connection with the exercise of functions that affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the public are or may become entitled, eligible, liable or subject (but does not include a legislative instrument):
  - (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents,
  - (b) a document containing particulars of any administrative scheme,
  - (c) a document containing a statement of the manner, or intended manner, of administration of any legislative instrument or administrative scheme,
  - (d) a document describing the procedures to be followed in investigating any contravention or possible contravention of any legislative instrument or administrative scheme,
  - (e) any other document of a similar kind.
- **Contentious Information:** is that which is sensitive, controversial, likely to be subject to intense media interest or public debate and speculation.
- **Reasonable search:** Searches must be conducted using the most efficient means reasonably available. A Department is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources.

### Legislation

- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *State Records Act 1998*

### Related policies

- Privacy Management Plan

### Other related documents

- Government Information (Public Access) Procedures
- GIPA Search and Certification forms

### Superseded documents

This policy replaces:

- NSW Industry & Investment Policy A-099 – Right to Information

### Revision history

Version	Date issued	Notes	By
1	22/10/2015	Developed to address the requirements of the NSW Department of Industry	Director Governance & Information Requests

### Review date

1 July 2018

### Contact

Director Governance & Information Requests (02) 9995 0911  
 gipa.enquiries@industry.nsw.gov.au