

Standing order 52 - responses

NUMBER TI-G-147

VERSION 1.0

AUTHORISED BY Deputy Director General Finance Strategy & Operations AUTHOURISED DATE 04/06/2013

ISSUED BY Legal Services

EFFECTIVE DATE 04/06/2013

Policy statement

NSW Trade & Investment will respond to orders for the production of documents under the Legislative Council's Standing Order 52 within the specified timeframes and scope of the order. The department will

- use a rigorous and verifiable procedure for identifying documents for production
- prevent the inappropriate release of Cabinet documents
- ensure that, where appropriate, claims of privilege are made in relation to produced documents.

Scope

This policy applies to NSW Trade and Investment, the NSW Food Authority and the Office of the Rural Assistance Authority. It does not automatically apply to the Cultural Institutions, Catchment Management Authorities or other statutory authorities within the cluster but may be adopted by those bodies.

Requirements

1. All documents (other than Cabinet documents) within the scope of the Order must be provided.
2. Documents created for the dominant purpose of being submitted to Cabinet must not be produced (whether or not they were submitted to Cabinet).
3. Officers conducting the search must fully document who conducted the search and the scope of the search that was undertaken by completing the [Branch Search Record form \(Attachment A\)](#).
4. Division Heads must certify that appropriate searches have been conducted and all relevant information has been provided ([Attachment B](#)).
5. Appropriate claims for privilege must be made by the Division Head.
6. *Claims for privilege*

Documents provided are made publicly available without any restriction on access unless a claim for privilege is made. Claims for privilege may be made where it is considered against the public interest for documents to be available for public inspection. Privilege is most commonly sought to restrict the release of the personal information of individuals, commercial-in-confidence and commercially sensitive information of third parties and where legal or parliamentary privilege may apply. If a claim for privilege is made the documents must still be provided, but can only be inspected by members of the Legislative Council unless the claim is refused.

Claims of privilege may be in relation to an entire document or only to those portions of a document concerning the information for which privilege is claimed. Where privilege is claimed for parts of a document two versions are to be provided - a complete copy over which privilege is claimed, and an edited version from which the sensitive information has been redacted.

The Government Information (Public Access) Act 2009 (GIPA Act) is informative when determining public interest immunity considerations which potentially warrant a claim for privilege. At Section 14 and Schedule 1 of the GIPA Act these are specified as matters concerning:

- Responsible & Effective Government
- Law Enforcement & Security
- Individual Rights, Judicial Processes & Natural Justice
- Business Interests of Agencies & Other Persons
- Environment, Culture, Economy & Other Matters
- Secrecy Provisions of Acts or Statutory Rules
- Cabinet Information
- Executive Council Information
- Contempt of Court & Parliamentary Privilege
- Legal Professional Privilege

Information concerning Cabinet related material which is not actually a Cabinet document must be provided but may be subject to a separate claim for privilege. This would be appropriate where a document which was not created for the dominant purpose of being submitted to Cabinet includes material referring to Cabinet deliberations or the position taken by, or recommended to be taken by, a Minister in such deliberations and decisions.

To validate the search process and methodology, suitable records are to be kept of who was involved in the search for documents, the search parameters or criteria and what records were searched

Procedures

1. The Manager Governance & Information Requests (MGIR) emails the Order to all Division Heads with a date by which a response is required with a copy to the Director General. If any recipient is aware of an area that may hold relevant information that has not been included in this initial request for documents the MGIR is to be advised immediately.
2. Division Heads will identify the areas holding relevant documents, issue directions for searches to appropriate staff, and provide adequate resources to comply with the Order.
3. Staff must undertake a thorough search (including for example, TRIM, physical file holdings, individual and Branch computer drives, electronic or pocket diaries/notebooks, emails etc), record details of the search and provide electronic and hard copies of the documents and search records to the Division Head.
4. Division Heads are to review the search records and documents and certify that a suitable search has been undertaken and all relevant documents provided.
5. Division Heads provide an electronic copy of following documents to the MGIR: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
6. If there has been a significant exchange of relevant documents with other agencies Staff must advise the MGIR and the MGIR will consult with those agencies to ensure all relevant documents are identified and discuss possible claims of privilege for common documents.
7. The MGIR prepares a draft Departmental response, based upon the documentation and advice provided by Division Heads.
8. The DDG Finance, Strategy & Operations reviews the proposed response to ensure compliance with this Policy and submits for endorsement and issue by the Director General.

Roles and responsibilities

- Division Heads are responsible for:
 - Ensuring a thorough search is undertaken within their area.
 - Advising MGIR of areas outside their portfolio which may hold relevant information.
 - Ensuring all relevant documents within the scope of the Order are identified, copied and referred to the MGIR within the specified timeframe, including: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
 - Identifying and explaining the basis of any claims for privilege and where privilege is only claimed in relation to part of a document providing both a complete and a partially redacted copy to the MGIR.

- The MGIR liaises with Department of Premier & Cabinet (DPC) and Division Heads regarding actions required to comply with the Order and the preparation of draft responses.
- The DDG Finance, Strategy & Operations ensures compliance with the requirements of this Policy, including that all necessary certifications have been received.
- The Director General issues the response when satisfied it fully complies with the Order.
- The Director Media and Communications in the relevant Division/s will prepare a Rapid Response Note where appropriate after the date for the documents to be tabled in Parliament has passed.

Safety considerations

The safety and wellbeing of staff will be enhanced by being fully informed of their obligations and able to respond comprehensively to the orders.

Delegations

- Not applicable

Definitions

- Division Heads are:
 - Deputy Director General Industry, Innovation, Hospitality & the Arts
 - Deputy Director General Finance, Strategy & Operations
 - Deputy Director General Resources & Energy
 - Deputy Director General, Agriculture NSW
 - Deputy Director General, Catchments & Lands
 - Commissioner, NSW Office of Water
 - CEO, NSW Food Authority
 - Executive Director, Biosecurity NSW
 - Executive Director, Fisheries NSW
 - Executive Director Business Services - for the remaining areas of NSW DPI

Legislation

- None

Related policies

- None

Other related documents

- None

Superseded documents

- None

Revision history

Version	Date issued	Notes	By
1.0		New policy developed for NSW Trade & Investment	MGIR

Review date

30/06/2015

Contact

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