



office of the  
information  
commissioner

new south wales

# Changes to your right to government information in NSW

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promoting open government

# Right to information reforms – what's changing?

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- On 1 July 2010, the GIPA Act replaced the FOI Act and Chapter 4, Part 2 (sections 12, 12A, 12B and 13) of the LGA Act 1993.
- The aim is to open government information to the public by:
  - a proactive release of government information by agencies
  - an enforceable right for public to access government information
  - only restricting access when there is an overriding public interest against disclosure.
- Formal applications should be a last resort.

## What is the OIC and what does it do?

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- The Office of the Information Commissioner (OIC) established as part of new right to information system.
- OIC is independent of other government agencies.
- Role of Information Commissioner to promote public awareness and understanding of new right to information legislation, and provide information, support, advice, assistance and training to agencies and general public.
- The OIC may receive and deal with complaints about anything covered by the GIPA Act, and can conduct external reviews of certain agency decisions.



# What are the aims of the reforms?

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- Simplify and streamline access
- Promote open discussion and contribute to public debate
- Enhance government accountability
- Inform public about the operations of agencies
- Ensure effective oversight of public funds expenditure
- Reveal or substantiate misconduct or negligent, improper or unlawful conduct.



# What is government information?

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- Government information is information contained in a record held by a government agency.
- It also includes information held by private sector entities with whom government agencies contract, over a certain dollar amount.
- Government agencies include state government departments, Ministers and their staff, public authorities, public offices, local authorities and courts etc.



# How can government information be accessed?

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- Search the agency's website.
- Contact the government agency and ask for the information.
- The agency will decide whether the information requested:
  - is open access, or 'mandatory release' information
  - should be made available as part of a 'proactive release'
  - can be disclosed through 'informal release'
  - requires a formal access application.

# Is any government information not accessible?

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- Yes – if there is an overriding public interest against disclosure.
- Generally, agencies cannot disclose information in the 12 categories listed in Schedule 1 to the GIPA Act.
- Examples: Cabinet deliberations, sensitive personal or commercial-in-confidence information, information that could jeopardise public safety.
- Public interest is the relevant touchstone.
- The fact that disclosure of information might cause embarrassment to, or loss of confidence in, the Government is irrelevant and must not be taken into account.

# What happens when someone doesn't get access?

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- When someone doesn't get access to the government information they are seeking they can make a formal access application.
- A valid formal application for access to government information must:
  - be in writing
  - state that it is made under the *Government Information (Public Access) Act 2009 (NSW)*
  - have an Australian postal address for return correspondence
  - provide enough details to help the agency identify the information the applicant wants and
  - enclose the application fee of \$30.



# Considerations before recommending a formal access application?

- Agencies should consider:
  - Is the information already publicly available?
  - Is it a request for the applicant's personal information?
  - Can the information be released informally?
- If answer is yes to any of these questions, a formal access application **should not be required.**
  
- Agencies should then consider:
  - Is it an application for sensitive information?
  - Is the scope of request so broad that it will take significant agency resources to provide the information?
  - Does the GIPA Act require consultation with third parties before releasing the information?
- If the answer is yes to any of these questions, a formal access application **may be required.**

## How long should a formal application take?

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- Within 20 working days for notification of agency decision on an access application unless applicant agrees to extend the time.
- Extension of 10-15 days where consultation with a third party is required or if agency needs to retrieve records from archives.
- If access is deferred then the agency must notify applicant and include the reason for deferral and the date on which access will be given.
- Application is considered 'refused' if no decision within 20 days. Application fee must be refunded and applicant may seek an internal or external review of this refusal.
- This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

# What are the review options and time limits?

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Applicants have three options if they have been refused access to information:

3. Internal review
4. Review by the Information Commissioner
5. Review by the Administrative Decisions Tribunal (ADT)

## Where can I get more information?

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- Go to [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)
- Email [oinfo@oic.nsw.gov.au](mailto:oinfo@oic.nsw.gov.au)
- Call 1800 INFOCOM (1800 463 626) between 9am to 5pm, Monday to Friday (excluding public holidays)
- Mail GPO Box 7011, Sydney NSW 2001
- Visit the OIC at Level 11, 1 Castlereagh Street, Sydney NSW 2000

