



Checklist

September 2021

Open access information under the GIPA Act and GIPA Regulation – agency requirements

A checklist to assist agencies to comply with open access requirements under the *Government Information (Public Access) Act 2009* (GIPA Act) and the *Government Information (Public Access) Regulation 2018* (GIPA Regulation).

This checklist is designed to be used by agencies to promote compliance with their open access obligations under the GIPA Act and GIPA Regulation.

The GIPA Act and GIPA Regulation require NSW agencies to make a range of open access information publicly available, unless there is an overriding public interest against disclosure of the information. Open access information is to be made publicly available free of charge on the agency's website (unless to do so would impose unreasonable additional costs on the agency). If an agency decides not to make information available for free on its website, at least one alternative method of access must be free of charge. Agencies may charge for open access information only if it is available for free in at least one other format.

How to determine whether information is open access information that should be made publicly available free of charge

To determine whether information is open access information that should be made publicly available free of charge, agencies need to:

1. Identify whether the information falls within one of the categories of open access information in the GIPA Act or GIPA Regulation.
2. Apply the public interest balancing test to determine whether there is an overriding public interest against disclosure of the information or some part of it.¹ Where the information in issue is open access information, this is an important factor in favour of disclosure.² There is no express obligation to consult third parties when undertaking the public interest test in relation to open access information.
3. If there is an overriding public interest against disclosure in relation to some of the information then, where practicable, that information must be deleted from the copy of a record so the remainder can be made available.³
4. The GIPA Act requires an agency to keep a 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.⁴ The record is to indicate only the general nature of the information concerned, however a general statement on the agency's website is not sufficient to meet this requirement. As a matter of good practice, agencies should maintain a central record of all open access information that has been withheld.

NOTE: The GIPA Act and GIPA Regulation do not require or permit an agency to make open access information available if doing so would in any way constitute an infringement of copyright.⁵

¹ GIPA Act section 6(4) and 13

² *Webb v Port Stephens Council (No. 3)* [2018] NSWCATAP 286 at [77]

³ GIPA Act section 6(4)

⁴ GIPA Act section 6(5)

⁵ GIPA Act section 6(6)

How access to open access information should be made free of charge

Open access information is to be made publicly available free of charge on the agency's website and in any other way the agency considers appropriate, such as:

1. for inspection free of charge by any person at the office of the local authority during ordinary office hours; or
2. providing a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.

The GIPA Act requires that at least one of the ways in which the agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.

The following checklist can assist you to identify open access information under the GIPA Act and GIPA Regulation.

Question	Open access information (tick applicable)
1. Is the information one of the following types of open access information identified in the GIPA Act?	<ul style="list-style-type: none"> <input type="checkbox"/> the agency's current agency information guide (see Division 2 of the GIPA Act), <input type="checkbox"/> 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, <input type="checkbox"/> the agency's policy documents (see Division 3 of the GIPA Act), <input type="checkbox"/> the agency's disclosure log of access applications (see Division 4 of the GIPA Act), <input type="checkbox"/> the agency's register of government contracts (see Division 5 of the GIPA Act), <input type="checkbox"/> the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure, <input type="checkbox"/> such other government information as may be prescribed by the regulations as open access information.
2. Is the information one of the following types of open access information identified in the GIPA Regulation?	<p>Minister</p> <ul style="list-style-type: none"> <input type="checkbox"/> any media release issued by the Minister, the following details concerning overseas travel undertaken by the Minister— <ul style="list-style-type: none"> <input type="checkbox"/> the portfolio to which the travel relates, <input type="checkbox"/> the purpose and anticipated benefits to New South Wales of the travel, <input type="checkbox"/> the destinations visited, <input type="checkbox"/> the dates of travel, <input type="checkbox"/> the number of persons who accompanied the Minister (including Ministerial advisors, agency staff and family members), <input type="checkbox"/> the total cost of airfares, <input type="checkbox"/> the total cost of accommodation, <input type="checkbox"/> the total cost of other travel expenses (including travel allowances). <p>Government Departments</p> <ul style="list-style-type: none"> <input type="checkbox"/> a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year,

	<ul style="list-style-type: none"> <input type="checkbox"/> the total number and total value of properties disposed of by the Department during the previous financial year, <input type="checkbox"/> the Department's guarantee of service (if any), <input type="checkbox"/> the Department's code of conduct (if any), <input type="checkbox"/> any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department. <p>Statutory bodies</p> <ul style="list-style-type: none"> <input type="checkbox"/> the total number and total value of properties disposed of by the statutory body during the previous financial year, <input type="checkbox"/> the statutory body's guarantee of service (if any).
3. If your agency is a local council, is the information any of the following types of additional open access information identified in the GIPA Regulation?	<p>Information about local authority</p> <p>Information contained in the current version and the most recent previous version of the following records:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the model code prescribed under section 440 (1) of the <i>Local Government Act 1993 (NSW)</i> (LGA) and the code of conduct adopted under section 440 (3) of the LGA, <input type="checkbox"/> code of meeting practice, <input type="checkbox"/> annual report, <input type="checkbox"/> annual financial reports, <input type="checkbox"/> auditor's report, <input type="checkbox"/> management plan, <input type="checkbox"/> Equal Employment Opportunity management plan, <input type="checkbox"/> policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors, <input type="checkbox"/> annual reports of bodies exercising functions delegated by the local authority, <input type="checkbox"/> any codes referred to in the LGA. <p>Information contained in the following records (whenever created):</p> <ul style="list-style-type: none"> <input type="checkbox"/> returns of the interests of councillors, designated persons and delegates, <input type="checkbox"/> agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public), <input type="checkbox"/> minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting, <input type="checkbox"/> reports by the Chief Executive of the Office of Local Government presented at a meeting of the local authority. <p>Information contained in the current version of the following records:</p> <ul style="list-style-type: none"> <input type="checkbox"/> land register, <input type="checkbox"/> register of investments, <input type="checkbox"/> register of delegations,

- register of graffiti removal work,
- register of current declarations of disclosures of political donations,
- the register of voting on planning matters.

Plans and policies

Information contained in the current version and the most recent previous version of the following records:

- local policies adopted by the local authority concerning approvals and orders,
- plans of management for community land,
- environmental planning instruments, development control plans and contributions plans made under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) applying to land within the local authority's area.

Information about development applications

Information contained in the following records (whenever created):

- development applications (within the meaning of EPA Act) and any associated documents received in relation to a proposed development including the following—
 - home warranty insurance documents,
 - construction certificates,
 - occupation certificates,
 - structural certification documents,
 - town planner reports,
 - submissions received on development applications,
 - heritage consultant reports,
 - tree inspection consultant reports,
 - acoustics consultant reports,
 - land contamination consultant reports,
- records of decisions made on or after 1 July 2010 on development applications (including decisions made on appeal),
- a record that describes the general nature of the documents that the local authority decides are excluded under the categories directly below.

However, the following information about development applications is not open access information:

- the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
- commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret, or
- development applications made before 1 July 2010 and any associated documents received (whether before, on or after that date) in relation to the application.

Where a local authority decides that information falls into one of the three categories of information about development applications that is not open access information, the local authority must keep a record describing the general nature of the information.

	<p>Approvals, orders and other documents</p> <p>Information contained in the following records (whenever created):</p> <ul style="list-style-type: none"> <input type="checkbox"/> applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application, <input type="checkbox"/> applications for approvals under any other Act and any associated documents received in relation to such an application, <input type="checkbox"/> records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals, <input type="checkbox"/> orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA, <input type="checkbox"/> orders given under the authority of any other Act, <input type="checkbox"/> records of building certificates under the EPA Act, <input type="checkbox"/> plans of land proposed to be compulsorily acquired by the local authority, <input type="checkbox"/> compulsory acquisition notices, <input type="checkbox"/> leases and licences for use of public land classified as community land, <input type="checkbox"/> performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.
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Additional information - Information contained in the returns of the interests of councillors and designated persons

- Schedule 1 to the GIPA Act lists additional open access information relevant only to local councils. This includes the returns of the interests of councillors and designated persons.
- It is mandatory for local councils to make the returns of the interests of councillors and designated persons and delegates publicly available unless there is an overriding public interest against disclosure of the information.⁶ Local councils would benefit from promoting consistency and accessibility in relation to returns of interest by establishing a single readily identifiable open access pathway. This should include meaningful labelling of returns by year and type, and relevant links. The returns should be easily and prominently located on a Council's website and able to be located from a single search from the main page.
- The author of a return of interests may claim that there is a public interest against disclosure of a particular piece of information contained in the return on one basis, for example, that their home address is personal information, or release of their home address would compromise their physical safety.⁷ The author might also claim that there is a public interest against disclosure of a different piece of information contained in the same return on an entirely different basis, for example, that the release of their sources of income might prejudice a legitimate financial or business interest.⁸ In that case, the public interest test would be applied separately to each piece of information claimed to be the subject of an overriding public interest against disclosure.
- There is no requirement to undertake consultation with the author of a return of interests. This means that any claim of a public interest against disclosure must be considered on its face against the recognition of an express legislative intention that the information constitutes open access information together with the existing presumption in favour of disclosure under the GIPA Act.
- In applying the public interest test, the decision-maker must only redact information for which there is an overriding public interest against disclosure. In some instances, this may result in the street number and name of a residential address being redacted but not the suburb or postcode.
- The principles that apply to a public interest determination also apply with respect to open access information.⁹

⁶⁶ *McEwan v Port Stephens Council* [2021] NSWCATAD 110 at [132]

⁷ GIPA Act section 14 clauses 3(a) and 3(f)

⁸ GIPA Act section 14 clause 4(d)

⁹ GIPA Act section 15

- Local councils can mitigate the power imbalance between administrative officers charged with collecting and managing returns of interests from councillors and senior administrators by having consistent and visible leadership. General managers provide that leadership and under the GIPA Act they are the principal officers responsible for implementing effective training, systems and policies. Those policies, together with leadership, enable the risks associated with the systemic power imbalance to be mitigated so that the public's right to know is preserved.

Silent electors

- A councillor or designated person can lodge a request that their residential address not be included on any authorised roll or list of electors if they consider that having their address on a roll or list of electors places their or their family's safety at risk.¹⁰
- If a councillor or designated person is declared a silent elector, this would be a relevant consideration against disclosure of that person's electoral address as open access information on the basis that disclosure might prejudice a system or procedure for protecting the safety of persons if the electoral addresses were publicly available by other means.¹¹
- The underlying facts that supported a person's application to become a silent voter might also be a consideration against disclosure of that person's address as open access information on the basis that disclosure might expose a person to risk of harm or serious harassment or serious intimidation.¹²

Other useful resources

Go to our website for more guidance on information access and tips, including:

- [Fact Sheet on what is an agency](#)
- [Fact Sheet on open access](#)
- [Fact Sheet on GIPA Act fees and charges](#)
- [Fact Sheet on the GIPA Act and copyright](#)
- [IPC Guideline 1: For Local Councils on the disclosure of information \(returns disclosing the interest of councillors and designated persons\)](#)

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au

¹⁰ Electoral Act 2017 (NSW) section 36

¹¹ GIPA Act section 14 clause 2(d)

¹² GIPA Act section 14 clause 3(f)