

## How does the *GIPA Act* affect local government? \*

The *Government Information (Public Access) Act 2009* (the *GIPA Act*) introduces a new 'Right to Information' system to New South Wales, replacing the existing Freedom of Information (FOI) system which has been operating since 1989. The new system is designed to meet community expectations for more open and transparent government, and is consistent with similar new Open Government initiatives already introduced in Queensland and proposed by the Australian Government and Tasmania.

The *GIPA Act* will commence in early 2010. This allows time for policy guidance to be issued, training materials to be developed and for training to be delivered to agencies before commencement. As principal officers, general managers need to start communicating the essence of the new open government objectives and processes to all staff.

The *GIPA Act* applies to all NSW government agencies, including local councils and county councils. It requires proactive information disclosure through mandatory publication and authorised release of 'open access information'. The Act also provides for disclosure in response to informal requests and a revised system of response to formal access applications.

### Open access information

Open access information is information that agencies must publish, unless there is an overriding public interest against disclosure. Section 18 of the *GIPA Act* lists the open access information that all agencies, including local councils, must publish. This includes:

- policy documents. These are documents that are likely to affect the rights, privileges or other benefits of members of the public, or impose or change obligations or penalties (see section 23 for examples of policy documents agencies might hold).
- the agency's publication guide with information about the council's structure and functions, and listing the type of information that is publicly available (see section 20).

- the disclosure log containing information about successful access applications if they raise matters of general public interest (see sections 25 and 26).
- the register of contracts worth more than \$150,000 that councils have with private sector bodies (see section 27 and see separate knowledge update: *Commercial arrangements for local government*).
- documents tabled in Parliament by or on behalf of an agency, eg, annual reports.
- the record of information not made public due to an overriding public interest.

Schedule 5 to the *GIPA Act* assists councils by providing a specifically tailored and detailed list of additional open access information that must be released. Local councils will be required to publish information about:

- their codes, management plans, financial plans and policies,
- development applications, and
- approvals, orders and other documents.

Local councils are encouraged to make any other information they hold publicly available unless there is an overriding public interest against disclosure.

Section 6 of the *GIPA Act* states that open access information must be publicly available on a website, unless to do so would impose an unreasonable additional cost on the agency. In this case, the information must be freely available in some other format. The information can be available in any other way the agency considers appropriate. Agencies may charge for open access information, provided that it is available for free in at least one way.

### Informal access to information

Authorised staff may release information following an informal request, that is, a request that is not a formal access application (see section 8).

Although councils cannot be compelled to release information following an informal request, release is

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encouraged unless there is an overriding public interest against disclosure. If a document the subject of an informal request contains sensitive material that would be against the public interest to disclose, councils may still facilitate access to the document by deleting that material.

Councils may release information in response to an informal request subject to any reasonable conditions, and in any format.

### Formal access applications

Local councils may also release information subject to a formal access application being made. Part 4 of the *GIPA Act* sets out the procedure for making and dealing with formal applications for access to information.

Applications must be made in writing, contain sufficient information to enable the information requested to be identified, and be accompanied by a \$30 application fee. An agency has 20 working days to decide an application (with provision for that time limit to be extended by a maximum of 15 days if the records need to be retrieved from archives or third parties need to be consulted).

A person who makes an access application has a legally enforceable right to be provided with the information requested unless there is an overriding public interest against its disclosure.

Decisions made regarding access applications are subject to internal agency review as well as to external review by the Information Commissioner and/or the Administrative Decisions Tribunal (ADT).

The Office of the Information Commissioner (OIC) has prepared a series of templates and other resources to assist agencies to deal with formal access applications. See [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au) for further details.

### Reporting

There are specific reporting requirements under the *GIPA Act*. These are set out in section 125, and will be supplemented by Regulations made under the *GIPA Act*. Councils can obtain further help by using the *Strategic Tasks Guide for Councils*, which includes deadlines for the lodgement of reports, including annual reports, summary of affairs and financial reports. The guide has been circulated to all local councils by the Department of Local

Government and is available at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

### Preparing for commencement of the *GIPA Act*

To prepare for the commencement of the *GIPA Act*, general managers are advised to:

- designate a senior executive to take responsibility for compliance with the Act and for leading a change management process to transition from FOI to the new Right to Information system
- ensure that there is early communication about the new Right to Information system to all staff
- begin planning for delivery of the new open access information obligations
- initiate development of a training plan for officers who will be responsible for the open access obligations, for responding to informal requests for information, and to formal access applications and for internal review. The OIC is developing an overall training plan and materials to support agency training
- consider the most appropriate location for Right to Information officers within their organisation. As a guide, the legislation emphasises avoiding a legalistic or defensive approach and expressly provides that agencies are not subject to the direction or control of any Minister in dealing with formal access applications
- assess the ability of their council's information systems to handle the routine publication of open access information, to identify and retrieve requested information, and to fulfil reporting requirements of the *GIPA Act*. Where systems are not adequate, early action will be required to make necessary changes
- ensure that records managers are aware of the type of information routinely collected and distributed to the public by front counter staff
- address the implications of the *GIPA Act* for their council's obligations under the *State Records Act 1998*.

### Further information

- Go to [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)
- Email [ocinfo@oic.nsw.gov.au](mailto:ocinfo@oic.nsw.gov.au)
- Mail GPO Box 7011, Sydney NSW 2001
- Call **1800 194 210** between 9am to 5pm, Monday to Friday (excluding public holidays).

If you have a hearing or speech impairment, you can call us through the National Relay Service

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(NRS) on **133 677** or if you want to talk to us with the assistance of an interpreter, you can call us through the Translating and Interpreting Service (TIS) on **131 450**. NRS and TIS are free services.

**\* PLEASE NOTE:**

*The new Right to Information system has not yet commenced. If you are seeking access to government information now, before the Government Information (Public Access) Act 2009 (GIPA Act) commences, please contact the agency holding the information, or visit the Freedom of Information website at [www.dpc.nsw.gov.au/about\\_us/freedom\\_of\\_information](http://www.dpc.nsw.gov.au/about_us/freedom_of_information) or contact the Premier's Department FOI Hotline on 02 9228 4441.*