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New expectations for open government

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Information Commissioner

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NSW right to information reforms

- 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.

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The role of the Information Commissioner

- 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.

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The aims of the GIPA reforms

- 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.

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What is government information?

- 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.

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How can government information be accessed?

- 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.

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Is any government information not accessible?

- 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.

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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**.

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What are the review options?

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

1. Internal review
2. Review by the Information Commissioner
3. Review by the Administrative Decisions Tribunal (ADT)

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For more information

- Go to www.oic.nsw.gov.au
- Email oiinfo@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

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