



office of the
information
commissioner
new south wales

Consultation paper 2: fees and charges under the GIPA Act

Issues for agencies

October 2011

promoting open government

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Consultation Paper 2: October 2011

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1. Background and context

1.1 With the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) having been in operation since 1 July 2010, it is timely to consider whether the fees and charges mechanisms in the Act are working in practice to support the objects of the Act. This paper and related consultations aim to present an overview of issues concerning the cost of providing, and affordability of obtaining, access to government information under the GIPA Act.

1.2 The object of the GIPA Act is to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective by opening government information to the public by:

- (a) authorising and encouraging the proactive public release of government information by agencies, and
- (b) giving members of the public an enforceable right to access government information, and
- (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.¹

(2) It is the intention of Parliament that the GIPA Act:

- (a) be interpreted and applied so as to further the object of the Act, and
- (b) that the discretions conferred by the GIPA Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.²

1.3 The GIPA Act prescribes fees and charges that agencies may impose for providing access to information in certain circumstances. For example, the GIPA Act allows agencies to:

- charge an application fee and processing charge for dealing with formal access applications;
- require an applicant to pay an advance deposit in relation to processing charges;
- impose a fee to conduct an internal review of a decision made regarding an access application;
- charge for open access information, provided the information is available free of charge in at least one format; and
- make information available proactively at the lowest reasonable cost.³

1.4 The GIPA Act does not authorise agencies to charge for information released informally under section 8 of the Act.

1.5 The GIPA Act includes provisions to ensure that all people, including those who may be financially disadvantaged, are able to access government information by providing agencies with a general discretion to reduce or waive the application fee and/or processing charges.⁴ Additionally, an applicant is entitled to 50 per cent reduction of the processing charges if the agency is satisfied that the applicant is suffering financial hardship⁵ or the information applied for is of special benefit to the public generally.⁶ These provisions are discussed further in Part 2 of this paper.

1. GIPA Act s 3(1).

2. GIPA Act s 3(2).

3. See Part 2 and Appendix A of this paper for an indication of the fees and charges applicable under the GIPA Act.

4. GIPA Act s 127.

5. GIPA Act s 65.

6. GIPA Act s 66.

1.6 The levels of the fees and charges prescribed under the GIPA Act, and the circumstances in which they may be levied, generally remain unchanged from the *Freedom of Information Act 1989* (NSW) (the FOI Act), the law which the GIPA Act repealed and replaced.

Fees and charges prior to the GIPA Act

1.7 Under the FOI Act, an application fee of \$30 and a \$30 per hour processing charge applied for formal applications, and the potential existed for a 50 per cent reduction in processing charges for financial hardship and for requests with a special public benefit component.

1.8 However, the former FOI Act and the GIPA Act have marked differences in the policy approach to fees and charges. Section 67 of the former FOI Act empowered the Minister responsible for the Act to establish guidelines concerning fees and charges:

(2) In establishing guidelines under this section, the Minister shall have regard to:

- (a) the need to ensure that disadvantaged persons are not precluded from exercising their rights under this Act merely because of financial hardship, and
- (b) the need to ensure that fees and charges should reflect the costs incurred by agencies and Ministers in exercising their functions under this Act.

1.9 In 2008, the NSW Ombudsman commenced a review of the FOI Act, which included the question of fees and charges under that Act. In a discussion paper released that year, the Ombudsman described the policy rationale underpinning the fees and charges system in the FOI Act. Referring to a report by the former Premier's Department, the Ombudsman's paper noted the following:

After assessing all factors, it was decided that New South Wales' charging policy, in summary, should recognise the socio-political desirability of FOI, tempered with the recognition that scarce public resources are being used.... The overall effect is to balance the value of the information provided against the cost and effort involved, even though the proportion of costs recovered is still small.⁷

1.10 The Ombudsman's consultation paper asked a series of questions about whether the social policy objectives of the FOI Act justified the Act's approach to fees and charges; whether they should be raised or lowered; whether there should be different fees for personal and non-personal information; whether charges should be based on processing time rather than the amount of information released; and whether the provisions concerning the authority to reduce or refund fees and charges remained appropriate.

1.11 Following consultation, the Ombudsman noted a lack of consensus among respondents. He agreed that FOI should not operate on a cost recovery basis, but considered that, in any overhaul of FOI laws, fees and charges should remain at current levels as they fell within the normal range for Australian jurisdictions and there was no compelling need for them to be increased.⁸

1.12 The NSW Parliament subsequently passed the GIPA Act keeping fees and charges at the same levels as the provisions in the FOI Act. However, Parliament did not include a provision in the GIPA Act similar to section 67(2)(b) of the FOI Act. Instead, the objects of the GIPA Act require the Act to be implemented to facilitate access to government information at the "lowest reasonable cost".

1.13 Therefore, while the GIPA Act contains very similar provisions to the FOI Act dealing with fees and charges, it has a different policy rationale. The OIC is interested to see whether the fees and charges provisions in the GIPA Act are operating in a way that supports the disclosure of government information to the public at the "lowest reasonable cost".

7. NSW Ombudsman, *Review of the Freedom of Information Act 1989*, Discussion Paper (September 2008) at 30.

8. NSW Ombudsman, *Opening up government*, Report (February 2009) at 81-82.

Purpose of this paper

1.14 Cost and affordability of government information, both from the point of view of the public and the agency, are key factors affecting accessibility of information. If fees and charges make access to information too costly for the public, or present too great an administrative impost for government agencies, then this works against the objects of the GIPA Act. Therefore, how the fees and charges provisions operate in practice is an important indicator of how successful the GIPA Act is in achieving its objects.

1.15 The focus of this paper is on learning how government agencies apply the fees and charges provisions in practice, whether they consider the provisions to be working effectively, and inviting suggestions for improvement, keeping in mind the objects of the GIPA Act. The OIC has released a separate survey for members of the public, the media and non-government agencies. See [GIPA Act fees and charges fact sheet](#).

1.16 We would like agencies to tell us:

- the basis on which they make decisions to charge for access to information, including policies about charges for open access information and for information released proactively, as well as policies for fees and charges relating to formal applications and internal reviews;
- the basis on which processing charges are calculated, eg, do agencies charge in 15-minute segments; what activity agencies include as “processing”, etc;
- the circumstances in which agencies will reduce, refund or waive fees and/or charges;
- views about the “lowest reasonable cost” of providing access to government information and suggestions about strategies that agencies could employ to minimise fees and charges;
- how agencies manage, record and report on monies received from release of information under the GIPA Act;
- views about the effectiveness of the fees and charges provisions in the GIPA Act, especially given that fees and charges are unlikely to cover the administrative costs of providing access to information; and
- any suggestions for improvements that could be made to the legislation or regulations, or by way of specific guidance from the OIC.

1.17 To complement this paper, the OIC plans to meet with a cross section of agencies to obtain their views about matters of concern to them. As part of this consultation, we will include members of the public who may be marginalised or disadvantaged, and their advocates.

1.18 A series of targeted questions is included at the end of this paper. The OIC encourages agencies to respond and is happy to provide any necessary assistance.

Potential outcomes

1.19 The OIC will consider agency responses to the issues raised in this paper, along with feedback from other consultation with media, members of the public and non-government organisations. The outcome of the consultation, and our analysis of the issues and responses, will form the basis of a report.

1.20 That report may result in a number of possible outcomes. Those outcomes will depend on the nature of the feedback, but may include any or all of the following:

- a special report to Parliament under section 38 of the *Government Information (Information Commissioner) Act 2009* (NSW) (GIIC Act) setting out agency practice and concerns, and the Information Commissioner’s views on the issues raised;
- recommendations to the Attorney General for reform of the GIPA Act or Regulation; and

- targeted guidance and training for agencies from the OIC about interpreting and applying the fees and charges provisions.

How to respond

1.21 At the end of this paper is a questionnaire. Agencies may respond by:

- filling out the questionnaire at the end and emailing it to the OIC at ocinfo@oic.nsw.gov.au
- posting the response to:

Office of the Information Commissioner
GPO Box 7011
Sydney NSW 2001

- faxing the response to (02) 8114 3756
- telephoning the OIC on 1800 INFOCOM (1800 463 626)

Agency responses will be published on the OIC website.

1.22 The OIC would like to receive responses from agencies by 31 January 2012.

2. Legislative provisions

2.1 The GIPA Act sets out the circumstances in which fees and charges may be imposed as part of providing access to information. The Act is most prescriptive about fees and charges for formal access applications.

Formal applications

2.2 The GIPA Act sets out the following maximum amounts that may be charged when dealing with access applications:

- \$30 for the application fee;⁹
- \$30 per hour for processing the application;¹⁰ and
- \$40 application fee for an internal review by the agency.¹¹

2.3 The application fee counts towards any processing charge payable by the applicant.¹² Thus, if an agency charges at the full rate of \$30 per hour, the application fee will pay for the first hour of processing the access application. The first 20 hours of processing time is free if an access application is made for personal information about the applicant.¹³

2.4 An agency may require an advance deposit up to a maximum of 50 per cent of the estimated processing charge.¹⁴ Failure to pay an advance deposit within the specified time means that an agency does not have to deal further with the application.¹⁵

2.5 If an agency does not decide an access application within the required time frame, the agency must refund all fees and charges, including advance deposits.¹⁶

2.6 Access applicants may seek review by the Information Commissioner or the Administrative Decisions Tribunal (or both) of agency decisions:

- imposing a processing charge or to require an advance deposit;
- refusing a reduction in a processing charge; or
- refusing to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment.¹⁷

Discounts in processing charges

2.7 An applicant may apply for a 50 per cent reduction in processing charges on the grounds of financial hardship.¹⁸ Under clause 9 of the GIPA Regulation, an agency is required to reduce the processing charge for dealing with an access application by 50 per cent if the applicant provides evidence that the applicant is:

- a. the holder of a Pensioner Concession card issued by the Commonwealth that is in force,
- b. a full-time student,
- c. a non-profit organisation, including a person applying for or on behalf of a non-profit organisation.

9. GIPA Act s 41.

10. GIPA Act s 64.

11. GIPA Act s 85.

12. GIPA Act s 64(3).

13. GIPA Act s 67.

14. GIPA Act s 68, s 69.

15. GIPA Act s 70.

16. GIPA Act s 63, s 71(2).

17. GIPA Act s 80.

18. GIPA Act s 65.

2.8 Applicants are also entitled to a 50 per cent discount where the information applied for is of special benefit to the public generally.¹⁹ The Information Commissioner has released a Guideline on the circumstances in which this reduction in processing charges should apply.²⁰

General discretion to waive, reduce or refund fees and charges

2.9 Agencies have a general discretion to reduce, waive or refund any fee or charge paid or payable under the GIPA Act.²¹

Charges for providing information in other ways under the GIPA Act

2.10 Section 6 of the GIPA Act states that provided open access information is made available to the public for free in at least one format, agencies may charge for that information disclosed in other formats. So, for example, if an agency makes a policy document available for inspection and on its website, it may charge for the document in hard copy form.

2.11 Section 7 provides that information disclosed under an agency's proactive release program is to be made publicly available either free of charge or at the lowest reasonable cost to the agency.

2.12 Schedule 1 to the GIPA Regulation contains a list of open access information that local councils must make publicly available. Clause 4 of the Regulation states that local councils must make the information available for inspection at council offices, and provide copies free of charge or for a charge not exceeding the reasonable cost of photocopying.

Charges for providing access to personal information and health information

2.13 Access by members of the public to their own personal information held by government agencies is covered by two pieces of legislation in New South Wales. The GIPA Act defines personal information as:

information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Personal information includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.²²

2.14 In addition to the GIPA Act, section 14 of the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) provides people with a right of access to their personal information, stating that agencies must "at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information". The Office of the Privacy Commissioner is of the view that agencies should provide people with access to their own personal information free of charge.

2.15 Under the GIPA Act, people may obtain access to their personal information informally under section 8 free of charge, or may lodge a formal access application. The OIC encourages agencies to provide access to people's own personal information informally and without charge wherever possible. Where a formal access application is necessary, the first 20 hours of processing time is free.²³

2.16 Under the GIPA Act, people may also obtain access to their health information held by government agencies. The same charges apply as for personal information. Alternatively, people may seek access to health information held by public or private sector agencies, such as doctors and private hospitals, under the *Health Records and Information Protection Act 2002* (NSW) (HRIP Act).²⁴ Under the HRIP Act an agency may decide to provide access to health information free of charge or it may impose a fee. The amount of that fee is not specified in the HRIP Act, although agencies must

19. GIPA Act s 70.

20. See Guideline 2 *Discounting charges – special benefit to the public generally* (March 2011), at http://www.oic.nsw.gov.au/agdbasev7/wf/assets/oic/m15000112/guideline_2_discounting_charges_march11.pdf.

21. GIPA Act s 127.

22. PPIP Act s 4, GIPA Act sch 4[4].

23. GIPA Act s 67.

24. The HRIP Act defines "health information" in s 6.

provide access without excessive costs. This means the fee could be either more expensive or cheaper than the fee charged under the GIPA Act.²⁵

2.17 The focus of the OIC in this consultation is on fees and charges imposed by government agencies under the GIPA Act, and not on the PPIP or HRIP Acts. However, the fact that personal and health information can be requested and charged for under a number of different Acts can be confusing for agencies and the public. The OIC is interested to hear how agencies charge for the personal and health information they hold, and whether the multiple charging regimes are causing problems.

Fees and charges in other jurisdictions

2.18 There is little consistency in fees and charges in other Australian and overseas jurisdictions. Some jurisdictions have chosen to abolish fees for applications and for internal reviews. For example, the 2010 Commonwealth reforms to the *Freedom of Information Act 1982* (Cth) abolished application and internal review fees. Other jurisdictions, such as Queensland, have regulations dealing specifically with fees and charges in great detail, setting out amounts that may be charged for photocopying and other expenses.

2.19 The table at Appendix B sets out the provisions in certain other jurisdictions.

25. For more information on access to health information, see the fact sheet on our website entitled “*How to access your health information from government agencies*” at http://www.oic.nsw.gov.au/agdbasev7/wr/assets/oic/m150001l2/fact_sheet_hripa_and_gipav3aug2011.pdf.

3. Issues for discussion

3.1 Since the commencement of the GIPA Act on 1 July 2010, the OIC has received regular enquiries about the fees and charges provisions from agencies and members of the public. This feedback, together with the OIC's research of the situation in other jurisdictions, has highlighted a number of issues for discussion. Those issues fall under three broad categories:

- the underlying policy basis for the fees and charges provisions (eg, do the provisions operate fairly, and do they promote the objects of the GIPA Act?);
- the mechanics of the provisions themselves (eg, are they framed clearly, and are they easy to interpret and apply?); and
- agency practice.

Underlying policy basis

3.2 A number of agencies have told the OIC that they are concerned about the financial impact of the fees and charges provisions, noting that the cost of providing access to information usually exceeds the fees and charges that may be levied under the GIPA Act. The fees and charges provisions in the GIPA Act reflect a balance between promoting the public interest in making government information available at the lowest reasonable cost, and the recognition (although unstated in the Act) that providing the information represents a cost to government agencies.

3.3 By leaving fees and charges in the GIPA Act at the same level as the former FOI Act, Parliament has indicated that the GIPA Act is not intended to operate on a cost recovery basis.²⁶

3.4 Some agencies have told the OIC that the cost of administering the fees and charges provisions exceeds the value of the fees charged. For example, the resources required to process payments by cheque or money order, the delay in funds clearing, and the need to draw a refund cheque in the event of a deemed refusal are far more than the \$30 application fee paid. As a result, some agencies choose to waive application fees and processing charges.

The OIC is interested in hearing agency views on whether:

- **the fees and charges provisions benefit agencies overall**
- **they help promote the objectives of the GIPA Act, and**
- **they should remain in their current form.**

3.5 The OIC will consider the impact of fees and charges on affordability of access to government information when we consult with members of the public and non-government organisations.

Clarity of the provisions

3.6 The provisions of the GIPA Act can only be fully effective if they are properly understood and applied. The OIC seeks agencies' views on whether the fees and charges provisions are sufficiently clear and easy to interpret and apply.

26. In his Agreement in Principle speech on the GIPA Bill, the then Premier, the Hon Nathan Rees MP, noted that the fees and charges prescribed in the GIPA Act go "nowhere near" the full cost of providing access: see NSW, *Parliamentary Debates (Hansard)*, Legislative Assembly, 17 June 2009, 16224.

We would like to hear agency feedback on the provisions in the GIPA Act regarding:

- **application fees**
- **advance deposits**
- **processing fees**
- **the 50 per cent discount in processing charges to which an applicant suffering financial hardship is entitled under section 65**
- **the 50 per cent discount in processing charges to which an applicant is entitled when applying for information that is of special benefit to the public generally under section 66, and the Information Commissioner's Guideline under that section, and**
- **the general discretion that agencies have to waive, reduce or refund any fee or charge that may apply under the GIPA Act.**

Calculation of processing charges

3.7 Based on enquiries received by the OIC to date, a major area of confusion among agencies appears to be the calculation of processing charges. This issue has also been the subject of a number of review requests received by the OIC.

3.8 The processing time for an application is defined in section 64 of the GIPA Act as the total amount of time that is necessary to be spent by any officer of the agency in:

- (a) dealing efficiently with the application (including consideration of the application, searching for records, consultation, decision-making and any other function exercised in connection with deciding the application), or
- (b) providing access in response to the application (based on the lowest reasonable estimate of the time that will need to be spent in providing that access).

3.9 Some agencies appear to be unsure about the type of activity that would, or should, be considered "processing" within the meaning of section 64, and how those charges should be calculated. Feedback received from stakeholders (including members of the public, non-government organisations, media and agency staff) suggests that this has created inconsistency and uncertainty in practice.

3.10 For example, some agencies charge for all general administration incidental to or associated with processing the application, while others only charge for the actual time it takes to locate a file or consult with a third party. The OIC's view, as provided in Guideline 2, is that section 64 should be read narrowly in order to promote the objects of the GIPA Act. In our view, agencies should only be charging for work necessary to make the decision whether or not to release the information. We do not consider that they should charge for things such as registering the application; conversations with the applicant to clarify the request or reduce the scope; drafting file notes or letters; postage and other general administration incidental to or associated with processing the application.²⁷

3.11 Agencies also have different billing methods. For example, some agencies interpret the \$30 per hour processing charge to mean that \$30 may be charged even where the work completed

27. See Guideline 2 *Discounting charges – special benefit to the public generally* (March 2011) at [1.6]-[1.7].
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did not take an entire hour, whereas other agencies charge in part-hour increments. Because of these varying arrangements, there is the potential for two requests that are similar in scope to give rise to quite different charges.

A more prescriptive approach?

3.12 As noted at paragraph 2.18, and can be seen in the table at Appendix B, different approaches are taken in freedom of information legislation in other jurisdictions. In Queensland, for example, three types of fees and charges may apply: an application fee; a processing charge and an access charge. The application fee is set by the Regulation at \$39²⁸ and cannot be waived by an agency.²⁹ Processing charges may be levied for time taken to search for and retrieve documents, and to make a decision, including doing things necessary to make that decision.³⁰ The first five hours of processing is free. After that time a processing charge of \$6.00 for every 15 minutes (or part thereof) applies.³¹ No processing charges may be imposed at all for requests for personal information.³²

3.13 In Queensland, access charges may be imposed in addition to processing charges to cover a range of situations associated with the cost of providing access to documents, including the cost of relocating documents from another site, of providing written transcriptions, and of photocopying documents. The photocopying charge is set by the Regulation at 20 cents per A4 black and white page.³³

3.14 Similar provisions apply in relation to the Commonwealth system, which specifies particular charges for search and retrieval, decision-making and access to documents.

3.15 The advantage of taking a prescriptive approach to fees and charges is that agencies and members of the public would have more clarity around what can and cannot be charged for, and how those charges should be imposed. This could potentially reduce the number of external reviews sought in relation to fees and charges. However, a disadvantage might be that the provision could operate in an overly-restrictive or inflexible manner, and could increase the administrative burden on agencies. There is also the potential that developing a “laundry list” of things that agencies can charge for might increase the cost to the public of obtaining access to government information.

The OIC seeks agency views on:

- **whether the fees and charges provisions in the GIPA Act are sufficiently clear to enable agencies to apply them correctly and efficiently; and**
- **what further guidance, if any, agencies would like about fees and charges.**

Agency practice

3.16 Government agencies across NSW have adopted a range of practices for charging for providing access to information under the GIPA Act. In addition to the differences in applying and calculating processing charges discussed above, the OIC has become aware of other differences in agency practice. For example, some agencies routinely waive or reduce application fees and processing charges, while others do so only on request. Similarly, some agencies make prospective applicants aware in advance of the possibility that fees and charges may be reduced or waived, while others appear to have been reluctant to reduce fees and charges even upon receiving proof of financial hardship.

28. *Right to Information Regulation 2009* (Qld) cl 4.

29. *Right to Information Act 2009* (Qld) s 24(4).

30. *Right to Information Act 2009* (Qld) s 56.

31. *Right to Information Regulation 2009* (Qld) cl 5.

32. *Right to Information Act 2009* (Qld) s 59.

33. *Right to Information Regulation 2009* (Qld) cl 6.

3.17 The OIC wishes to gain information about agency practice across NSW regarding fees and charges. In doing this, we hope to gain a better understanding of whether the implementation of the GIPA Act is working to achieve the Act's objects. Greater knowledge of agency practice in this area will highlight the difficulties posed for agencies and members of the public, and the measures that may be necessary to address those difficulties. We also hope to discover examples of good practice to promote to agencies.

The OIC seeks information from agencies about strategies that have made implementation of the fees and charges provisions easier for them and for the public. For example,

- **what practices have agencies adopted to do with processing or billing that work well?**
- **what difficulties have agencies faced and how have they overcome them?**
- **would the capacity to accept online payment be beneficial?**

After completing the questions, please save your questionnaire and return it by either email, post or facsimile:

Email: oiinfo@oic.nsw.gov.au

Post: Officer of the Information Commissioner

GPO Box 7011

Sydney NSW 2001

Fax: (02) 8114 3756

4. Questions for agencies

Agency name:

Contact details (optional):

General

1. Do you think the fees and charges provisions in the GIPA Act are easy to interpret and apply?
2. Overall, what benefits do the fees and charges provisions have for your agency?
3. What difficulties, if any, do the provisions present?
4. Do you think the fees and charges provisions are effective in facilitating information to be disclosed to the public at the “lowest reasonable cost”?
5. What overall improvements would you suggest to the fees and charges provisions in the GIPA Act?
6. Would the ability for applicants to pay electronically be beneficial? What obstacles might there be?

Formal access applications

7. Does your agency routinely impose the full application fee and processing charges? In what circumstances would you waive, reduce or refund those fees?
8. How do you make applicants aware of the possibility that fees and charges may be waived, reduced or refunded?
9. Should application fees be abolished in NSW as they have been in other jurisdictions? If they were abolished, what would be the impact on your agency?
10. Should processing charges be abolished? If they were abolished, what would be the impact on your agency?
11. How does your agency calculate processing charges, eg, in hourly segments, or based on activity undertaken?
12. What activity does your agency charge for as part of “processing”?
13. Do you think the provisions about discounting processing charges work effectively? What improvements do you suggest?
14. Does your agency record and report on revenue received from GIPA Act applications? If this were to be required, what benefits or problems would this create for your agency?
15. Should the GIPA Regulation be more prescriptive about the levels of fees and charges and the circumstances in which they should be applied? If so, how?

Internal reviews

16. Does your agency routinely charge the fee for internal reviews?
17. In what circumstances would you waive or reduce that fee?
18. Should the internal review fee be abolished? If it were abolished, what impact would this have on your agency?

Charges for proactive release of information

19. Does your agency routinely charge for information disclosed proactively? In what circumstances would you not charge?
20. On what basis are those charges calculated?

Personal information

21. What charges, if any, does your agency impose for providing people with access to their own personal information?
22. When deciding requests for personal information, does your agency follow the provisions in the GIPA Act or the PPIP Act? What reason do you have for this choice?

Health information

23. What charges, if any, does your agency impose for providing people with access to their own health information?
24. Do you apply the GIPA Act or the HRIP Act when charging for health information? How do you decide which Act to use?

Other comments

Appendix A: Fees and charges under the *Government Information (Public Access) Act 2009* (NSW)

		Application fee	Other charges	When must fees be refunded?	When must other charges be reduced?	When can fees and charges be waived, reduced or refunded?
Open access information		No	Yes. Charges may apply, provided one method of access is free (s 6). Local councils may impose reasonable photocopying charges (GIPA Regulations cl 4(1)(b)).	N/A	N/A	Agencies have a general discretion to waive, reduce or refund any fee or charge that may be imposed under the GIPA Act where they consider it to be appropriate (s 127).
Information released proactively		No	Yes. May be made available at the lowest reasonable cost to the agency (s 7).	N/A	N/A	
Information released informally upon request		No	No	N/A	N/A	
Formal access applications	Personal information	Yes – \$30 fee (includes first hour of processing – (s 64(3)).	Yes. First 20 hours free, then processing charges of \$30/hour (s 67).	Application fee must be refunded if: <ul style="list-style-type: none"> the agency does not deal with the application in time (s 63(1)); or the application is invalid (s 52(5)). 	Processing charges must be discounted by 50% where: <ul style="list-style-type: none"> the applicant can show financial hardship (by producing evidence that they hold a Pensioner Concession card, are a full-time student, or a non-profit organisation – s 65 and the GIPA Regulations cl 9); or where the information applied for is of special benefit to the public generally (s 66). In the latter case, the applicant is entitled to a full waiver of the charges if the information is publicly released before or within three working days after being given to the applicant. 	
	Other information		Yes. Processing charges of \$30/hour (s 64).			
Review	Internal review by agency	Yes – \$40, unless review of a deemed refusal (s 85).	No	If agency does not decide the review within the specified period (s 86).	N/A	
	External review by Information Commissioner	No	No	N/A	N/A	
	External review by ADT	Yes – \$73	No		If applicant can show financial hardship	

Appendix B: Fees and charges in other jurisdictions

Jurisdiction	Application fee	Processing charge	Charge for personal information	Other charges	Deposit	Internal review fee	Discounts/ waivers/ refunds
<p>Commonwealth</p> <p><i>Freedom of Information Act 1982</i></p> <p><i>Freedom of Information (Charges) Regulations 1982</i></p>	Nil	<p>Search and retrieval – \$15 per hour</p> <p>Decision-making – first five hours free, then \$20 per hour.</p> <p>Where a written transcript is necessary to assist decision-making – \$4.40 per page may be charged.</p>	No	<p>Access charges</p> <p>Where the information requested does not exist in discrete form and a new document needs to be generated, the actual cost of creating the new document may be recovered.</p> <p>Supervised “view only” access – \$6.25 per half hour.</p> <p>Photocopying charge – 10 cents per page.</p> <p>Copy of document other than photocopy – \$4.40 per page.</p> <p>Actual costs may be recovered for certain other forms of access (see Regulations Sch 1).</p>	<p>Yes.</p> <p>\$20 for estimated amounts between \$25 – \$100, or 25% of the total estimate for amounts greater than \$100.</p>	Nil	<p>No charge for FOI applications if the decision is not made within the statutory time frame.</p> <p>When considering whether to reduce or waive a charge, agencies <i>must</i> take into account:</p> <ul style="list-style-type: none"> • If the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and • whether the document is in the interest of the public or a substantial section of the public. <p>Agencies may consider any other matters relevant to reducing or waiving charges.</p>

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<p>Queensland</p> <p><i>Right to Information Act 2009</i></p> <p><i>Right to Information Regulation 2009</i></p>	\$39	<p>First five hours free.</p> <p>Subsequent charges of \$6 per 15 minutes (or part thereof).</p>	No	<p>Access charge</p> <p>Photocopying charge – 20 cents per page.</p> <p>No charge for providing access to information electronically.</p>	No	Nil	<p>Cannot waive application fee.</p> <p>Processing/access charges <i>must</i> be waived where the applicant:</p> <ul style="list-style-type: none"> has a health care or pensioner concession card; or is a non-profit organisation. <p>Processing/access charges <i>may</i> be waived where:</p> <ul style="list-style-type: none"> charging would be uneconomical for the agency; or the applicant is experiencing financial hardship.
<p>Western Australia</p> <p><i>Freedom of Information Act 1992</i></p> <p><i>Freedom of Information Regulations 1993</i></p>	\$30	<p>\$30 per hour (or pro rata for a part of an hour) for each of the following:</p> <ul style="list-style-type: none"> dealing with an application time spent photocopying and time spent transcribing information from a tape or other device. 	No	<p>Access charges</p> <p>\$30 per hour for access supervised by staff.</p> <p>Photocopying charge – 20 cents per page.</p> <p>Actual costs may be recovered for:</p> <ul style="list-style-type: none"> duplicating a tape, film or computer information and for delivery, packaging and posting. 	<p>Yes.</p> <p>25% of the estimated charge.</p> <p>A further advance deposit of 75% may be required if the agency considers it necessary to meet the charges for dealing with the application.</p>	Nil	<p>A charge must be waived or be reduced if the applicant is impecunious.</p>
<p>Victoria</p> <p><i>Freedom of Information Act 1982</i></p> <p><i>Freedom of Information (Access Charges) Regulations 2004</i></p>	\$24.44	<p>Search and retrieval</p> <p>\$20 per hour</p>	No, if applicant impecunious	<p>Access charges</p> <p>\$5 per 15 minutes for supervised view only access.</p> <p>Photocopying charge – 20 cents per page.</p> <p>Reasonable costs incurred may be recovered for:</p> <ul style="list-style-type: none"> other photocopying access by audio/visual arrangements provision of written transcript or document provision of suitably qualified health service provider, or providing explanation of health information summary of health information. 	<p>Yes.</p> <p>\$25 for charges less than \$100;</p> <p>50% for charges greater than \$100.</p>	Nil	<p>Application fee may be waived or reduced if it would cause hardship to the applicant.</p> <p>Charges are to be waived if the request is a routine request for access to a document.</p>

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<p>Tasmania</p> <p><i>Right to Information Act 2009</i></p>	\$35 (or 25 fee units)	No, but application may be refused if the information is available for purchase at a reasonable cost.	Yes	No	No	Nil	<p>Application fee can be waived if:</p> <ul style="list-style-type: none"> the applicant is impecunious the applicant is a member of Parliament acting in connection with official duty it can be shown that the applicant intends to use the information for a purpose that is of general public interest or benefit.
<p>New Zealand</p> <p><i>Official Information Act 1982</i></p>	Nil	<p>Charges must be reasonable.</p> <p>Ministry of Justice charging guidelines set the following amounts as reasonable for search and retrieval, provision of access and supervision:</p> <ul style="list-style-type: none"> first hour of staff time free; then \$38 per half hour or part thereof. <p>No charge for time spent:</p> <ul style="list-style-type: none"> deciding whether or not to approve access; in what form to provide information deciding to delete protected information. 	No (free under the <i>Privacy Act 1993</i> (NZ))	<p>Photocopying charge of 20 cents per page where more than 20 pages involved.</p> <p>All other charges incurred should be fixed at an amount which recovers up to the actual costs involved. This includes:</p> <ul style="list-style-type: none"> the provision of documents on computer discs; the retrieval of information off-site; reproducing a film, video or audio recording; arranging for the applicant to hear or view an audio or visual recording; and providing a copy of any map, plan or other document larger than foolscap size. 	Yes, for amounts in excess of \$76.	Nil	<p>Agencies have discretion to moderate or waive any fee.</p> <p>Appropriate considerations include:</p> <ul style="list-style-type: none"> financial hardship whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work; and whether remission or reduction of the charge would be in the public interest because it is likely to contribute significantly to public understanding of, or effective participation in, the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the applicant.