



Good practice for disclosure logs

knowledge update

March 2012

Section 25 of the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)* requires agencies to keep a disclosure log as part of their mandatory open access information. The disclosure log publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public.

Disclosure logs must be published on a website maintained by the agency and are required by section 26 of the GIPA Act to record the following information about an access application:

- a) the date the application was decided; and
- b) a description of the information to which access was provided in response to the application; and
- c) a statement as to whether the agency intends to make the information available to other members of the public and, if so, how it can be accessed.

Agencies may proactively publish additional information in the disclosure log if they consider it to be in the public interest to do so. However, disclosure logs are not required to record:

- a) personal information about an individual applicant or any other individual; or
- b) any factors particular to the applicant that were a consideration in the agency's determination of the public interest in connection with the disclosure of the information to the applicant.

What is the purpose of a disclosure log?

The disclosure log makes information that has already been publicly released in response to an access application available to other members of the public if the agency considers the information to be of wider public interest. An agency's disclosure log therefore facilitates open access to government information of public significance and relevance to the NSW community.

Must all information released under an access application be included a disclosure log?

No. While the GIPA Act encourages agencies to make as much government information available as possible, information need only be included in the disclosure log if

it is considered to be of interest to other members of the public.

After releasing information in response to an access application, agencies should consider the likelihood of the information being of interest to members of the public beyond the access applicant. If a wider public interest is perceived to exist, agencies should publish the information unless there is an overriding public interest against making the information publicly available by reference to the considerations listed in section 14.

Notifying persons of intention to include information on disclosure log

If an agency intends to publish information in its disclosure log, it must notify any authorised objector of this intention (section 56(3) &(4)). The authorised object must also be notified of his or her right to object to the information being included in the disclosure log. Agencies need to consider any objections that an authorised objector makes to the inclusion of the information in the disclosure log.

An authorised objector under section 56(1) of the Act includes:

- the access applicant
- any other person with whom the agency has consulted (or is required to consult) under section 54 of the GIPA Act.

The right to object is discussed below.

Disclosure logs and personal information

Generally, agencies should not include personal information about the applicant or a third party in their disclosure logs as there is unlikely to be a broader public interest in releasing this information. In this regard, agencies should also keep in mind their obligations under the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Health Records and Information Privacy Act 2002 (NSW)*.

Where information released subject to an access application contains information that is personal to an individual applicant or third party, but also other information with a broader public interest, agencies can remove the personal information to facilitate inclusion of the other information in the disclosure log.

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Example

An applicant seeks information concerning tonsillectomies done at her local public hospital, including waiting times, surgeries cancelled, etc, because her daughter needs to have surgery. The applicant provides medical evidence of her daughter's medical condition because she thinks this will support her access application.

The agency grants the request in full, and decides to include the general information about waiting times and surgeries in its disclosure log. It does not publish any personal or health information relating to the applicant or her daughter.

Benefits of an accurate and current disclosure log

The disclosure log supports the objective of the GIPA Act by giving members of the public open access to government information where this is in the public interest. Putting this information in the public domain also helps promote open government and transparency around government decision-making.

Some of the benefits of an agency listing details of an access application on the disclosure log are:

- it provides an indication to the agency of the type of information that the agency should consider releasing proactively;
- it provides members of the general public with an indication of the type of information that has already been released and what may be publicly available; and
- it also removes the need for agencies to process multiple applications for access to the same information.

What format should a disclosure log take?

The GIPA Act does not prescribe a format for agencies to publish disclosure log information, apart from the requirement to include the date the application was decided, a description of the information, and an indication of if, and how, the information is available.

Ideally, a disclosure log should:

- provide a link for people to access the information online; or
- include a statement explaining how the information can alternatively be accessed.

If information released in response to an access application is available online via the disclosure log, agencies have an ongoing responsibility to ensure that the links to electronic information are not broken and are in working order.

When should required information be published on a disclosure log?

Under section 26(2) of the GIPA Act, no details are to be recorded in the disclosure log until the access application is decided.

If an objection is made under section 56 before the access application is decided and the agency decides that an authorised objector is not entitled to object to the inclusion of the information in the disclosure log, the agency is entitled to include the information immediately after deciding the application (s 56(5)).

However, where a valid objection is lodged, the agency must not include the information in the disclosure log until that review, or any other review rights in relation to the access application, have been exhausted (s 56(6)).

How long should disclosure log information be made available?

The legislation is silent on agency responsibilities regarding the length of time disclosure log information must be publicly available online.

Agencies should keep information in the disclosure log current and up-to-date.

Informing authorised objectors of agency obligations

Under section 56(2A), where an agency considers that information about a person consulted under section 54 of the GIPA Act is likely to be included in the agency's disclosure as part of providing information about the access application, the agency must give written notice to that person advising:

- a) the relevant information about them or their interests/affairs concerning the access application will be included in the agency's disclosure log and the person can object to this
- b) they have a right of review under Part 5 of a decision by the agency to include information in its disclosure log despite the person's objection.

The agency should issue such a notice as soon as possible after determining that the agency is likely to include information about a consulted party in their disclosure log.

Applicants on the other hand, are to be informed when the agency acknowledges receipt of their access application, that:

- a) information concerning the application will be included in the agency's disclosure log and that the applicant can object to this, and
- b) a statement about the applicant's right of review under Part 5 of the GIPA Act of a decision by the agency to include information in its

disclosure log despite the applicant's objection: (section 56(3) GIPA Act)

An agency need not provide such a notification to an authorised objector if the agency considers it unlikely that information about the application will be included in the disclosure log.

Can authorised objector object to information being included in a disclosure log?

Yes. An authorised objector can object to the inclusion of all or some of the information in the agency's disclosure log. The objection can be made as part of the application or separately and can include reasons for the objection (s 56(1)).

An authorised objector is **only** entitled to object to the inclusion of information in a disclosure log where:

- a) the information includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative);
- b) the information concerns the authorised objector's business, commercial, professional or financial interests;
- c) the information concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector; or
- d) the information concerns the affairs of a government of the Commonwealth or another state (and the authorised objector is that government).

What if an authorised objector objects?

If an authorised objector has objected to the inclusion of information in the agency's disclosure log, the agency must provide notice indicating:

- a) the agency's decision about whether the authorised objector was entitled to object, and
- b) (if the agency has decided that the authorised objector was entitled to object) the agency's decision on whether to include the information in its disclosure log.

If the objector is the applicant to the access application, this notice is to be included in the agency's notice of decision of the access application (section 56(4)). A notice of decision must be provided to the applicant within 20 working days of receipt of the access application.

If the objector is a third party consulted under section 54 of the GIPA Act, the agency must provide this notice within 5 working days after making a decision on the access application (section 56(4A)). The OIC recommends that this notice be included in the notice of decision provided to the party consulted under section 54. Accordingly, such notice of decision and the notice

of the agency's decision to include or not include such information in the agency's disclosure log should be issued within 5 working days after the access decision is made.

A decision by an agency to include information in a disclosure log despite an objection by an authorised objector is a reviewable by the Information Commissioner and/or the Administrative Decisions Tribunal (s 80(m)).

How will the OIC review an objection?

In conducting an external review of an agency decision to include information in a disclosure log despite an objection by an authorised objector, the OIC will consider the following:

- Is the information subject to the access application of interest to other members of the public?
- If so, do any of the considerations under section 26(3) of the GIPA Act apply with respect to the access application?
- If yes, is the authorised objector entitled to object pursuant to section 56(2)?
- If yes, in the OIC's view should the discretion conferred by section 26(3) of the GIPA Act be exercised in the authorised objector's favour?

The OIC will then make a recommendation and notify the authorised objector and the agency.

Further assistance

Agencies should contact the OIC if they have any questions or need further advice about the publication guide requirements.

Where can I learn more about right to information?

- Go to www.oic.nsw.gov.au
- Email ocinfo@oic.nsw.gov.au
- Mail GPO Box 7011, Sydney NSW 2001
- Visit Level 11, 1 Castlereagh Street, Sydney NSW 2000

Call 1800 INFOCOM (1800 463 626) between 9am to 5pm, Monday to Friday (excluding public holidays).

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