



What is an agency?

The Government Information (Public Access) Act 2009 (NSW) (GIPA Act) provides the public with a right to access information held by government agencies.

A government agency is defined in the GIPA Act as:

- (a) a government department
- (b) a Minister (including a Minister's personal staff)
- (c) a public authority
- (d) a public office
- (e) a local authority
- (f) a court
- (g) a person or entity declared to be an agency pursuant to regulations made under the GIPA Act.

Government departments

The GIPA Act provides that a government department has the same meaning as in the *Public Sector Employment and Management Act 2002* (NSW). Section 6 of that Act defines a department as a division of government listed in Part 1 of Schedule 1 to the Act.

You may also find a list of agencies and principal departments recognised by the GIPA Act under Part 1 of Schedule 1 of the Act. Please refer to Part 1 of Schedule 1 for the current list of principal departments and agencies.

Prior to the formation of the super departments in July 2009 (and subsequent reorganisation into principal departments in April 2011), the NSW Government consisted of a greater number of smaller departments. The GIPA Act was passed by the Parliament of NSW in June 2009. Consequently, the legislation envisaged smaller entities than the current principal departments in its reference to "government department".

The existence of principal departments has an impact on the extent to which searches for information must be conducted across agencies, and raises issues in terms of what constitutes a transfer of an application, and who has responsibility for meeting the reporting obligations under the GIPA Act.

Each principal department should make it clear to the public how it deals with formal and informal requests for

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information. For example, some principal departments coordinate all requests for information centrally, while others refer requests to the sub-agency that holds the relevant information.

Furthermore, the OIC is of the view that the open access information required to be published on agency websites should be located on the website of the agency where people would be most likely to look for it. In most cases, this would be on the sub-agency website, as it is not always obvious to the public which agencies fall within the umbrella of each principal department.

Ministers and their staff

Ministers and their staff are considered to be agencies under the GIPA Act. They must comply with the same requirements as other agencies, but do not need to have an agency information guide or submit an annual report (see sections 20(1) and 125(1)).

The GIPA Act applies to information held by Ministers and their staff "in the course of the exercise of official functions in, or for any official purpose of, or for the official use of, the office of Minister of the Crown" (Sch 4 [11]). However, there is a conclusive presumption of an overriding public interest against disclosure concerning Cabinet or Executive Council information, or information contained in the Register of Interests kept by or on behalf of the Premier pursuant to the Code of Conduct for Ministers (see Sch 1 [2], [3], and [11]).

Public authorities

A public authority is defined in Sch 4 [2] of the *GIPA Act* as:

- (a) a statutory body representing the Crown, or
- (b) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of a legislative instrument (such as a university), or
- (c) the NSW Police Force, or
- (d) the Teaching Service, or
- (e) a state-owned corporation, or
- (f) a wholly-owned subsidiary of the Crown in right of the state or of a public authority, or
- (g) a body declared by a regulation to be a public

authority, including:

- NSW Adult Migrant English Service
- Australian Music Examinations Board NSW
- Duke of Edinburgh Award Scheme (NSW State Committee)
- Regional Development Australia

The following are **not** public authorities:

- (a) an incorporated company or association (unless declared to be a public authority by a regulation)
- (b) the Legislative Council or the Legislative Assembly or a committee of either or both of those bodies
- (c) a Royal Commission or a Special Commission of Inquiry.

State-owned corporations

As statutory bodies representing the Crown, State owned corporations are agencies for the purposes of the GIPA Act. Schedule 5 to the *State Owned Corporations Act 1989* (NSW) lists the following 15 statutory bodies:

- Essential Energy
- Delta Electricity
- Ausgrid
- Eraring Energy
- Hunter Water Corporation
- Endeavour Energy
- Landcom
- Macquarie Generation
- Newcastle Port Corporation
- Port Kembla Port Corporation
- State Water Corporation
- Superannuation Administration Corporation
- Sydney Ports Corporation
- Sydney Water Corporation
- TransGrid

Public offices

A public office is defined in Sch 4 [3] of the GIPA Act to mean:

- (a) an office established or continued for a public purpose by or under the provisions of a legislative

instrument, or

- (b) any other office to which an appointment is made by the Governor or by a Minister that is declared by the regulations to be a public office.

A public office does **not** include:

- the office of Governor, Lieutenant-Governor or Administrator of the state
- any office associated with either House of Parliament
- a judicial officer of a court
- an office that is already considered to be an agency under the GIPA Act.

Local authorities

The GIPA Act applies to information held by the 152 local and 4 county councils in NSW. The GIPA Act repealed and replaced the access to information provisions contained in Chapter 4 Part 2 of the *Local Government Act 1993* (NSW) on 1 July 2010.

Courts

A court includes:

- (a) a tribunal, a magistrate and a coroner, and
- (b) a registry or other office of a court and the members of staff of that registry or other office.

While information relating to a court's administrative functions is covered under the GIPA Act, there is a conclusive presumption of an overriding public interest against disclosure in relation to the judicial functions of a court (Sch 2 [1]).

Agencies declared to be part of other agencies

As prescribed by Sch 4 [6] to the GIPA Act, the regulations may declare that a specified agency is not to be regarded as a separate agency, but instead is to be regarded (for the purposes of the Act) as part of another specified agency.

Schedule 3 to the GIPA Regulation contains a list of agencies that are considered to be part of other agencies for the purpose of the GIPA Act.

Where can I learn more about right to information?

- Go to www.oic.nsw.gov.au
- Email oinfo@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).