

Fact sheet

Authorised proactive release of information *Government Information (Public Access) Act 2009 (NSW)*

August 2024

Introduction

The *Government Information (Public Access) Act 2009 (NSW)* (**'GIPA Act'**) provides for the public disclosure of government information held by NSW Government agencies.

The *authorised proactive disclosure of information* is one of the ways in which members of the public may access government information. This fact sheet assists staff of the Department of Communities and Justice (**'DCJ'**) to understand our obligations.

What is DCJ authorised to do and what are its obligations?

DCJ is authorised to proactively disclose government information it holds to the public, unless there is an *overriding public interest against disclosure*.¹ The authorised proactive disclosure of information by an agency is discretionary, but encouraged wherever possible.²

DCJ must undertake a review of its program for the authorised proactive release of government information at least every 12 months.³ In undertaking its annual review, DCJ should consider the kinds of information it holds and whether any information that it does not make publicly available would be suitable for disclosure online or by other means.

Why should DCJ proactively release information?

The disclosure of information is essential to a functioning democracy. The GIPA Act seeks to balance the interest in providing the public with information while avoiding disclosures that are not in the public interest.

Proactively releasing government information promotes transparency and accountability in the exercise of public functions and the operation of Government agencies. It assists the public to understand and participate in Government processes, policy development, and decision-making, improves customer satisfaction and service delivery, and supports better outcomes for the community.

¹ GIPA Act s 7(1).

² NSW Information and Privacy Commission Fact Sheet: [Authorised proactive release of government information](#).

³ GIPA Act s 7(3).

Who is authorised to proactively release information?

DCJ staff classified as **Clerk Grade 9/10 or higher**.⁴ Local approval pathways should also be observed.

What information may be suitable for proactive release?

Without limitation, information that may be suitable for proactive release includes:

- statistics and datasets.
 - information about DCJ initiatives, project development, and service delivery.
 - information that is regularly provided to members of the public on request.
 - information that could promote the open discussion of public affairs, enhance the transparency and accountability of Government, contribute to positive and informed debate on matters of public importance, or contribute to the effective oversight of the expenditure of public funds.
 - information that could inform the public about DCJ's operations and its policies and practices for dealing with members of the public.
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What information is not suitable for proactive release?

Information cannot be proactively released if there is an *overriding public interest against disclosure*.⁵ The *public interest test* is set out in s 13 of the GIPA Act:

There is an *overriding public interest against disclosure* of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

It is conclusively presumed that there is an overriding public interest against disclosing information referenced in [Sch 1 to the GIPA Act](#). This information must not be released.

If information is not covered by Sch 1, DCJ must weigh public interest considerations in favour of and against disclosure and decide where the balance lies.⁶ The matters in the [Table to s 14 of the GIPA Act](#) ("Table") may be taken into account as public interest considerations against disclosure, but no other factors can be considered.

Information that may not be suitable for release includes information that would, if disclosed:

- reveal an individual's personal information, contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* (NSW), or contravene a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* (NSW).

⁴ GIPA Act s 7(5); [Instrument of Authorisation – GIPA \(17 April 2020\)](#); [Delegation Schedule O](#), Part 1.

⁵ GIPA Act s 7(1).

⁶ GIPA Act ss 12-14.

- prejudice the effective exercise by an agency of the agency’s functions.
- prejudice the supervision of, or facilitate the escape of, any person in lawful custody, or prejudice the security, discipline, or good order of any correctional facility.
- prejudice any person’s legitimate business, commercial, professional, or financial interests.
- reveal commercial-in-confidence provisions of a government contract.

The Table should be consulted for a complete list.

The fact that the disclosure of information might be embarrassing to the Government, cause a loss of confidence in the Government, or be misunderstood or misinterpreted by any person, are **not** considerations against disclosing government information. These factors are irrelevant.⁷

DCJ can make a redacted copy of a record available to the public, with any information for which there is overriding public interest against disclosure deleted from the publicly available copy.⁸

How to release information that is suitable for disclosure

Generally, the most cost effective and accessible way to proactively disclose government information is to upload the information to a website. Staff who are authorised to proactively disclose information may raise a [ServiceNow](#) request to upload or update content on a website maintained by DCJ.

When deciding how to communicate information to the public, consider the following:

- If a document is voluminous or employs complex, technical language, consider publishing it with a plain English summary or using Multicultural NSW’s translation services to translate the document into other languages.
- Does your content meet accessibility requirements for visually impaired persons and/or persons who require assistive technology? Microsoft Office and Adobe Pro have accessibility checkers which provide hints for improving the accessibility of documents.
- Some members of the public have limited computer literacy or access to the Internet. Subject to cost considerations, think about providing alternative options to access information.

Contact us
<p>For more information, please contact Open Government, Information and Privacy, DCJ Legal, Law Reform and Legal Services:</p> <p>T: 02 9716 2662</p> <p>E: infoandprivacy@dcj.nsw.gov.au</p> <p>W: Visit DCJ’s Access to information page online or visit our Intranet Page.</p>

⁷ GIPA Act s 15.

⁸ GIPA Act s 7(4).