



The Director, Justice Policy
Department of Justice
GPO Box 6
SYDNEY NSW 2001

Via email: justice.policy@agd.nsw.gov.au.

To whom it may concern

THE TREASURY AND FINANCE CLUSTER SUBMISSION FOR REVIEW - THE GIPA ACT

Thank you for the opportunity to provide comment on the review of the *Government Information (Public Access) Act 2009* (NSW). This submission is from the Treasury and Finance cluster, including Treasury, the Office of Finance and Services and Service NSW.

Broader GIPA Concerns

1. The NSW Information and Privacy Commission should ensure Schedule 3 contains a current list of agencies declared to be part of other agencies. The Regulation which holds agencies accountable for matters outside their control needs revision. Machinery of government changes should be reflected in the Act and associated Regulation. It would also be beneficial for the IPC website to have a point in time list of agencies declared to be part of other agencies, along with contact lists for agencies in line with section 4.
2. With the increase in use of agencies engaging with members of the public via social media and instant messaging, consideration could be given to accepting applications via Twitter, as is currently the view of the UK's Information Commissioner's Office.
3. Consideration could be given to return to the previous name of *Freedom of Information Act* (FOI), which is easily recognisable by the public, private and public agencies. This would also realign NSW with all other Australian jurisdictions.

Applications

4. Part transfers of applications could provide better access for applicants should material be held across various agencies.
5. Insert a requirement to provide proof of identity for applications seeking personal information.
6. While the Act allows for public holidays, the Act should also allow for the Christmas Closedown period for the public sector. The working days listed in the Christmas Closedown Premier's Memorandum should be treated like public holidays for determining the required period for deciding an application.
7. Internal review and external review options could be streamlined. Third parties should be allowed to go straight to external review, affording them identical review options as an access applicant. Alternately, both applicants and third parties could go through internal review first.
8. Time available for third party consultations could be extended. Ten working days is insufficient to adequately consult and consider responses from all parties when multiple

third parties need to be consulted, for example, on a whole of government reform project that involves a number of agencies or jurisdictions. The 'ten working days' timeframe could stop at the first consultation until the last consultation has been issued, after which the statutory timeframe can recommence.

9. The threshold for third party consultation could be changed to when third parties "might reasonably be expected to have *substantial* concerns about disclosure", instead of merely "concern". This may reduce unnecessary third party consultation and appeals.
10. In line with section 110, agencies could be given the power to refuse unmeritorious applications, which would be a reviewable decision.
11. The Act could be explicit in the number of hours that deem an application refused on the grounds of an unreasonable and substantial diversion of the agency's resources. A 35 hour cap in the Act could allow the decision-maker to refuse the application once the estimate is for 35 hours or more.
12. As suggested by the Federal Information Commissioner, an applicant litigating against an agency cannot make a valid request in relation to documents about the litigating issues until the conclusion of the litigation.

Fees and charges

13. The Act could allow for recovery of retrieval fees for off-site storage from the applicant.
14. Provide guidance on whether duplicate discounted fees apply where the application is in the public interest *and* financial hardship grounds – i.e. is the charge 50% of the original charge or 25% of the original charge.
15. Clarification on what constitutes an "application" for the purpose of charging the application fee. Some agencies charge multiple application fees for different elements of the same request.
16. Clear guidelines on charging processing fees would assist how, and at what stage, fees should be charged. This could include guidance for circumstances when an applicant alters the scope of the request, and guidance on not releasing the information until the final charges are paid.

Practical Concerns in dealing with Applications

17. Some agencies appear to be using the Act where there may be gaps in other legislation to facilitate access and provision to that information.
 - a. Roads and Maritime Services requires a GIPA application to be able to provide details of the registered owner of a vehicle in cases where an accident has occurred and the applicant is seeking details of the person involved.
 - b. Some agencies require NSW Police to apply under GIPA for information pertaining to an investigation.

Regards



Jocelyn Yem
Manager, Executive and Ministerial Services
The Treasury