

The Director, Justice Policy
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27 October 2014

Dear Sir

Thank you for enabling the ICT Advisory Panel to submit this late comment on the Review of the Government Information (Public Access) Act 2009 (GIPA Act).

The [NSW ICT Advisory Panel](#) consists of industry members appointed by the Minister of Finance and Services. At our October meeting questions of Information Management were high on our agenda, with Ms Elizabeth Tydd, the Information Commissioner, attending our meeting and informing the Panel about the operations of the GIPA Act and international activities of relevance.

With the recent ascendance of the Open Data initiatives being fostered under the ICT Strategic Plan, the emphasis away from technology heralded by the new Digital Plus strategy update, and the promotion of cultural transformation in the NSW public sector through the Accelerating Digital Government Taskforce, the ICT Advisory Panel has identified a gap in the governance frameworks for all information in NSW.

As a response to claims that there are legislative barriers to sharing information, a number of reviews have been commissioned to investigate these claims. The findings have largely reported that the barriers identified are more those of perception and culture, than inherent in the legislative framework.

However, the multiple legislative instruments empower different agencies of government to focus on specific aspects of data/information. Initiatives are underway in each of the following agencies focusing on different aspects of information management:

1. Department of Finance and Services (who 'own' the ICT Strategy, and have policy responsibility for information management, including the development of the Information Management Framework and highly effective guidance),
2. Department of Premier and Cabinet (who manage the NSW Public Sector Governance Framework, and have responsibility for the Management Information Framework which coordinates information about performance),
3. the Public Service Commission (who addresses competencies of people in information management and many other areas),
4. the Information and Privacy Commission (who oversee the implementation of GIPA, Privacy and Personal Information Protection and Health Records and Information Privacy Acts),
5. State Records NSW (who regulate the framework for creating and managing records, or transaction information on which decisions are based and made).
6. And others with specific sectoral concerns, such as the Department of Health, Land and Property Information etc

Each of these agencies has a valid role to play in the complex digital framework, yet there is no mandated responsibility for information governance, coordination and execution of the open data initiatives, and the necessary standards across all these roles and responsibilities.

Information governance is increasingly a requirement for individual agencies and organisations, yet we appear not to have a coordinated approach to information governance as a whole in NSW. We do not have an overarching Information Strategy which ties together the component pieces, including data, required for robust information management at a time when the core importance of information as a key government asset is being recognised and promoted. In particular we need to improve our sophistication in thinking about information as a strategic asset.

Personal information is of particular social concern, and we need to think about different approaches and concerns for information which is explicitly given by a person and for which informed consent can be attained, and 'inadvertent' potentially identifiable information (or metadata) collected as we all participate in daily life (an example would be the data collected on people's movements inadvertently accumulating through use of the Opal Card). These are not technology issues, but span information management, privacy, availability for sharing within and beyond government and retention issues. Responsibility for many of these issues is assigned by the existing legislative frameworks, but they are divorced from one another, and potentially the site of contested interpretation and responsibility. Where such preconditions exist, it is easier to find ways of slipping between the cracks of legislative requirements. A coordinated information policy and appropriate governance mechanisms are needed.

The review of the GIPA Act provides an opportunity to raise these issues, and to suggest some mechanisms within that Act which would strengthen the framework. These suggestions do not address the whole of the sector coordination, but would provide a small improvement to the overall information environment.

Within the GIPA Act, the following suggestions are offered:

- That the definition of information under the act explicitly includes data within business systems and datasets extracted from business systems.
 - This would provide the mandate for the proactive release functions under that Act to apply to the 'open data' agenda, enable monitoring and reporting across these initiatives across government agencies.
- That information sharing agreements currently conducted via MOUs (agency to agency, NSW agency to Federal, interstate or local government agencies, agency to private organisations etc), to be published on agency websites.
 - This would allow greater public transparency of how government is sharing data, enabling an informed public and some public overview, while not inhibiting the encouragement for and development of such agreements.
 - **Note:** some care should be exercised to ensure that the existence of information not in the public interest is not revealed. An example might be a data sharing arrangement between Police and Juvenile Justice on data from a (perhaps fictional) database of paedophiles. It may not be in the public interest to reveal the existence or otherwise of such a database. The Information Commissioner should be able to

adjudicate and rule on whether or not these potentially sensitive data sharing arrangements should be published.

- Where there are data breaches, public concerns, issues of contention or problems arising or potentially arising from data sharing arrangements facilitated through the emergent data brokerage service, the IPC should be given the oversight role to investigate and adjudicate on these issues.
 - The oversight role would constitute a view external to the individual agency/ies and potentially bring together a panel of experts across government and other stakeholders to debate issues of changing social requirements and potential benefits to government service provision. There is no such mechanism at present and individual agencies are pursuing data collection and sharing arrangements within their own organisational perspectives. This suggestion would provide a mechanism to allow external oversight in areas where social concerns are raised, perceived and open to interpretation.
- That the IPC is enabled to be a review (and/or approval) mechanism for areas where the issues of data collection, proportionality and service benefits are considered when technologies that allow the creation, collection and use of the 'inadvertent' potentially personally identifiable information.
 - These areas are clearly where the unease is being expressed in the wider community. A review process would assist in ensuring that accountability is clearly present. Effective transformation to digital working and digital government demands data. But the government must be trusted to be a good and responsible steward and custodian of information. This is proposed as a mechanism to ensure that some external oversight is able to be invoked where social concerns are raised, particularly relating personal information or information which is potentially identifiable.
- That the IPC are charged with the review of legislative amendments to individual function or agency specific acts which seek to change the parameters of data/information management, access, use and retention. This would be a collaborative mandate bringing together other relevant agencies (such as State Records in some cases, particularly those relevant to data retention) to ensure that relevant agencies are maintaining coherence to a larger framework.
 - This suggestion is to counter the trend that individual agencies perceive the legislative environment relating to information management is too complex to navigate and hence to meet the specific business needs, agencies are tending to write very specific changes to information within function/agency specific legislation. Such a pragmatic approach – enabling a particular initiative – is having the effect of further fragmenting the overall information management and governance arrangements of the state, and adding to the already complex legislative framework.

Within a newly formulated and coordinated information strategy, there is clearly a need for an interagency forum for developing agreed standards for interoperability of data through something

like a 'data board' which could agree priorities for establishing data standards and data quality requirements. Such data coordination bodies are in evidence in the EU, in Denmark, Singapore, the UK and are proposed for NZ. The coordination and/or secretarial functions to support such an initiative could be assigned to the IPC.

There are a number of key areas that are not encompassed in these suggested alterations to the GIPA Act, and we wish to place these items on the agenda for focussed discussion within government. Largely we seek to utilise existing mechanisms already in place, rather than to duplicate or add complexity. We also are keen to ensure that the existing initiatives that are working well are not undermined or negated by any reforms, rather that these initiatives are given an appropriate mandate to operate.

Should you require further information on the above, please do not hesitate to contact Ms Barbara Reed who co-ordinated the above submission on behalf of the [NSW ICT Advisory Panel](#). Ms Reed, a member of the Panel is contactable via:

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Yours sincerely



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