



## **Right to Information under the *Government Information (Public Access) Act 2009***

### **1. Purpose of this Policy**

This Policy provides information concerning the responsibilities and procedures for the Office of the Inspector of the Law Enforcement Conduct Commission (OILECC) in complying with the *Government Information (Public Access) Act 2009* (“GIPA Act” or “GIPA”).

### **2. Government Information (Public Access) Act 2009**

The purpose of the GIPA Act is to facilitate public access to government information. Section 3(1) of the Act provides that the object of the Act is to open government information to the public by:

- (a) authorising and encouraging the proactive public release of government information by agencies, and
- (b) giving members of the public an enforceable right to access government information, and
- (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

Section 5 of the Act provides that there is a presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure.

The Act contemplates and authorises the release of information by Government agencies in the following ways:

- Open access information:
  - Section 6(1) of the Act provides that an agency must make government information that is its *open access information* publicly available unless there is an overriding public interest against disclosure of the information (as to what constitutes “open access information” see paragraph 4 below.)
- Proactive release of Government information:
  - Section 7(1) of the Act provides that an agency is authorised to make any government information held by the agency publicly available unless there is an overriding public interest against disclosure of the information.
- Informal release of Government information:
  - Section 8(1) of the Act provides that agency is authorised to release government information held by it to a person in response to an informal request by the person (that is, a request that is not an access application) unless there is an overriding public interest against disclosure of the information.



- Access application
  - Section 9(1) of the Act provides that a person who makes an access application for government information has a legally enforceable right to be provided with access to the information in accordance with Part 4 (Access applications) unless there is an overriding public interest against disclosure of the information.

However, some agencies such as OILECC, are bound by secrecy provisions in its governing legislation which can limit the type of information that can be released by the agency (as to which see paragraph 5 below).

### **3. Public Interest Considerations**

Section 12(1) of the Act provides that there is a general public interest in favour of the disclosure of government information. However, the public interest test pursuant to section 13 of the Act provides that 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.

Pursuant to s14(1) of the Act it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 to the Act. Schedule 1 to the Act specifies certain secrecy laws that prohibit the disclosure of certain Government information. OILECC is bound by such secrecy laws and is limited by the type of information it can make publicly available (as to which see paragraph 5 below).

Section 14(2) of the Act provides that the public interest considerations listed in the Table to section 14 of the Act are the only other considerations that may be taken into account under the GIPA Act as public interest considerations against disclosure. Item 6(1) of the Table refers to secrecy provisions and provides that there is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of the Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.

### **4. Open Access Information**

Part 3 of the Act encourages agencies to make certain information, defined as “open access information”, to be made publicly available without requiring a formal access application. Section 18 of the Act provides that open access information is:

- (a) the agency’s current agency information guide,



- (b) information about the agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament,
- (c) the agency's policy documents,
- (d) the agency's disclosure log of access applications,
- (e) the agency's register of government contracts,
- (f) the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure,
- (g) such other government information as may be prescribed by the regulations as open access information.

Although much of the information held by OILECC is 'excluded information' under the Act (as to which see paragraph 6 below), OILECC regularly makes available on its website reports that the Inspector has submitted to Parliament. Also available online is OILECC's Agency Information Guide. Such documents can be accessed at <https://www.oilecc.nsw.gov.au/>

#### **5. OILECC is bound by the secrecy provisions in the Law Enforcement Conduct Commission Act**

Schedule 1(1) to the Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information, the disclosure of which is prohibited by the laws listed in that Schedule (which are referred to in the Act as *overriding secrecy laws*), whether or not the prohibition is subject to specified qualifications or exceptions and whether or not a breach of the prohibition constitutes an offence. The *Law Enforcement Conduct Commission Act 2016* (LECC Act), which is the governing legislation of OILECC is listed in Schedule 1(1) to the GIPA Act, meaning that there is an overriding public interest against disclosure of information that is held by OILECC.

OILECC handles a great deal of personal and sensitive information and as such is bound by the secrecy provisions set out in s180 of the LECC Act. Section 180(2) of that Act provides that the Inspector or an officer of the Inspector must not, except for the purposes of carrying out their functions under the LECC Act, make a record of or disclose or communicate to any person any information being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under the Act. Section 180(5) of that Act provides that such information may however be disclosed in certain circumstances which are identified.

## **6. Excluded information held by OILECC**

Pursuant to Schedule 1(6) to the GIPA Act, it is to be conclusively presumed that there is an overriding public interest against disclosure of *excluded information* of an agency (unless the agency has consented to the disclosure).

Schedule 2 to the Act provides that information that relates to a function specified in that Schedule in relation to an agency specified in that Schedule is *excluded information* of the agency. Schedule 2(2) to the Act provides that information relating to OILECC's operational auditing, handling of misconduct matters (within the meaning of the LECC Act) investigative and reporting functions is 'excluded information'.

Section 43(1) of the Act prevents an access application from being made to an agency for access to its excluded information. Pursuant to s43(2) of the Act an application for government information is not a valid access application to the extent that the application is made in contravention of section 43.

## **7. OILECC Agency information guide**

Section 20 of the GIPA Act requires each agency to have an agency information guide. The OILECC information guide is available on its website at [www.oilecc.nsw.gov.au](http://www.oilecc.nsw.gov.au).

## **8. OILECC reports annually on the number of access applications that are made under the GIPA Act**

In compliance with s125 of the GIPA Act and clause 8 of the GIPA Regulation, OILECC reports on the number of access applications that are made under the GIPA Act to OILECC in its annual report.

## **9. Applying to OILECC for access to information**

Notwithstanding the limited circumstances in which OILECC can release government information ( as referred to in paragraphs 5 and 6 above), members of the public can apply to OILECC for access to some government information it holds such as reports that have been tabled in Parliament.

Section 41(1) of the Act provides that an application or other request for government information is not a valid access application unless it complies with the following requirements (the *formal requirements*) for access applications:

- (a) it must be in writing sent by post to or lodged at an office of the agency concerned or made in the manner approved by the agency under subsection (2),
- (b) it must clearly indicate that it is an access application made under this Act,
- (c) it must be accompanied by a fee of \$30,



- (d) it must state the name of the applicant and a postal or email address as the address for correspondence in connection with the application,
- (e) it must include such information as is reasonably necessary to enable the government information applied for to be identified.

To formally request information under the GIPA Act, OILECC's GIPA Application Form which can be found on the Office website must be completed and sent to OILECC by either email or by post.

Pursuant to s51(1) of the Act, OILECC will determine whether an application for access to information appears to be intended to be an access application. OILECC will also decide whether the application is a valid access application and will notify its decision to the applicant.

Section 51(2) provides that OILECC's decision as to the validity of an application must be made and notified to the applicant as soon as practicable after the agency receives the application and in any event within 5 working days after the application is received.

Section 51(3) of the Act provides that OILECC's acknowledgement of receipt of a valid access application must include the following:

- (a) the date by which the application is required to be decided (subject to any suspension or extension of the time for deciding an application),
- (b) a statement that the application will be deemed to have been refused if not decided by the required date,
- (c) the following statements about the inclusion of information in the agency's disclosure log (unless the agency considers it unlikely that information about the application will be included in the disclosure log):
  - (i) a statement that information concerning the application is likely to be included in the agency's disclosure log and that the applicant can object to this,
  - (ii) a statement about the right of review under Part 5 of a decision by the agency to include information in its disclosure log despite the applicant's objection,
- (d) such details of rights of review in connection with access applications as the Information Commissioner may from time to time direct.

Section 57(1) of the Act provides that an agency must decide an access application and give the applicant notice of the agency's decision within 20 working days (the *decision period*) after the agency receives the application.

Pursuant to s57(2) of the Act the decision period can be extended by up to 10 working days for either or both of the following reasons (with a maximum extension under this subsection of 15 working days for any particular access application):

- (a) consultation with another person is required under a provision of this Act,
- (b) records are required to be retrieved from a records archive.



Pursuant to s57(4) of the Act the decision period can also be extended (and further extended) by agreement with the applicant.

Section 57(5) of the Act provides that an agency must as soon as practicable after the decision period is extended (and in any case within 5 working days after it is extended) give the applicant notice of any extension of the decision period (including any extension by agreement with the applicant), indicating the date on which the extended decision period will end.

#### **10. Further information about the GIPA Act**

Further information on the operation of the GIPA Act and your rights under the GIPA Act can be obtained from the Information and Privacy Commission NSW (the Commission). Further information is available on the Commission's website at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au), or by contacting them in one of the following ways:

- By telephone on 1800 472 679,
- By emailing [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)
- By mail at GPO Box 7011 Sydney NSW 2001
- In person by visiting the Privacy Commission at Level 17, 201 Elizabeth Street, Sydney