

Public Access to Information

(Government Information (Public
Access) Act 2009) Procedure

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1. Procedure Statement

The Public Access to Information Procedure (Procedure) describes the processes the Greater Cities Commission (Commission) uses to make government information available to the public and fulfil its obligations as a Government agency under the [Government Information \(Public Access\) Act 2009](#) (GIPA Act).

The Commission is committed to maintaining a system of responsible and representative democratic government that is open, accountable, fair and effective and supports the appropriate public release of information.

To support the Commission's commitment to facilitating appropriate access to government information, staff must be aware of their obligations in the following instruments:

- this Procedure;
- the Commission's Information Access Policy;
- the Commission's Privacy Management Plan;
- the Commission's Electronic Data Records Management Policy;
- the Commission's Information Security Policy;
- the [NSW Government Open Data Policy](#);
- the [Government Information \(Public Access\) Act 2009](#);
- the [Government Information \(Public Access\) Regulation 2018](#); and
- the [Privacy and Personal Information Protection Act 1998](#).

Appendix 1 contains defined terms used in this Procedure.

2. Who does this Procedure apply to?

This Procedure applies to all staff including:

- permanent staff;
- temporary staff;
- casual staff;
- other Government sector employees who are on secondment or assigned to the Commission;
- contractors;
- consultants;
- volunteers; and
- employees of organisations who provide services under contract to the Commission.

For the purposes of this Procedure, "staff" refers to all people to whom this Procedure applies.

In this Procedure, a reference to a senior executive manager means:

- Chief Executive Officer;
- Executive Director; and
- Director.

3. Open Government Information

Open government information is defined in the *GIPA Act* by the authorisation and encouragement of government agencies to provide members of the public with an enforceable right to access government information unless there is an overriding public interest against disclosure (OPIAD).

Under pt [2](#) of the *GIPA Act* the Commission must make government information available by annually reviewing and releasing information on the Commission's website or managing information requests.

The general principles of open government information presume in favour of disclosure unless an OPIAD exists. Staff must assess government information with reference to the public interest considerations outlined in the *GIPA Act*, including:

- the conclusive presumptions of OPIAD described in sch [1](#) of the *GIPA Act*;
- the public interest considerations for and against disclosure outlined in div [2](#) of the *GIPA Act*; and/or
- any guidelines released by the Information Commissioner.

For more information relating to public interests considerations against disclosure (PICAD), staff should refer to the Commission's PICAD Factsheet.

4. Annual review and release of information

The Commission must annually review the information it holds to determine if information is required to be released as part of open access or may be released as part of proactive access.

Open access government information is mandated for release under s [6](#) and pt [3](#) of the *GIPA Act*. This information is to be made publicly available and free of charge; and

Proactive access of government information is considered to be of public benefit and is not already made available as part of the Commission's open access information obligations;

Unless otherwise specified in this Procedure or in the Commission's Information Access Policy, open access and proactive access information can be released on the Commission's website or distributed by any other means that the Commission determines to be appropriate.

The **Right to Information Officer** is responsible for working with business units to ensure that the Commission complies with its requirements under open access. This includes:

- verifying that the information released and on the website is current and valid;
- removing any information that is no longer valid; and
- ensuring any approved changes to access information are reflected in the Agency Information Guide.

The Right to Information Officer must also provide any information to senior executive managers that may assist in reviewing the information within their business unit for proactive release, such as:

- information the Commission currently releases; and
- data on recent access applications/requests that have been released.

Senior Executive Managers are responsible for conducting the review of their branches' information to determine if there may be information to be released as part of proactive access.

Senior Executive Managers may delegate this responsibility to one of their staff, provided this person has received training.

4.1. Process for releasing open access and proactive access information

Senior Executive Managers (or their delegate) must provide any information held by their branch that

has been identified as appropriate to release. Senior Executive Managers are encouraged to identify records that may contain privileged information or information with a PICAD. This advice will assist the Right to Information Officer in determining if the record is appropriate for release.

The Right to Information Officer maintains a register of Open Government Information which outlines:

- record title, date of creation and reference number or location;
- the records classification - open access or proactive access;
- any claims of privilege or PICAD's;
- any redactions made to make the record available to be published;
- any records that were not determined to be able to be published and the justification; and
- a link to where the record is made publicly available.

The Director, Governance and Legal and the Executive Director, People and Corporate Services approve the Open Government Information Register and for the records to be added to the Commission's website.

The Right to Information Officer works with the Media Team to have the records published in the appropriate locations on the Commission's website.

5. Managing information requests

Under ss [8](#) and [9](#) of the *GIPA Act* members of the public may request information to be disclosed that has not already been made available through open access information or proactive release.

The Commission's Right to Information Officer(s) manage information access requests which may be received as an informal access request or a formal access application.

An **informal access request** may be made to access government information that is not already made available as open or proactive access. Agencies are under no obligation to release information requested informally; however, they are encouraged to do so at the lowest possible cost to the applicant. There are various benefits for doing so, including:

- ease of access for the applicant;
- flexible timeframes for the agency to respond; and
- capacity for the agency to impose conditions on the access and use of the requested information.

Wherever possible, the Right to Information Officer(s) should promote efficient service delivery by managing access to information requests informally. The Commission's website provides advice about what information it will make available and encourages members of the public to make an informal access request before submitting a formal access request.

The Right to Information Officer(s) should consult with the Commission's Media Team where information is sought by a media organisation or personal.

Decisions made about the informal release of information are not reviewable under the *GIPA Act*. If the applicant disagrees with the outcome of their request, then they may choose to submit a **formal access application** to access their right to reviewable decisions under pt [5](#) of the *GIPA Act*. The following section has more information about formal access applications.

6. Formal access applications procedure

A formal access application made under the *GIPA Act*, provides the applicant with an enforceable right to access government information.

Part [4](#) of the *GIPA Act* outlines the requirements and entitlements for members of the public and

government agencies in managing formal access applications.

All formal access applications made to the Commission must be reviewed by the Right to Information Officer to determine if it is considered valid under the *GIPA Act*. This must occur within 5 days of the application being received by the Commission.

Once the application has been received and accepted as valid, the Commission must respond with a decision to the application within 20 working days.

Unless otherwise stated within this Procedure, all decisions made by the Commission with reference to formal access applications (as defined in s 9 and pt 4 of the *GIPA Act*) are reviewable by either the Information Commissioner or the NSW Civil and Administrative Tribunal (NCAT).

6.1. Valid access applications

Once an application has been received, the Right to Information Officer must first determine if the application is valid under the *GIPA Act*. A valid formal application must:

- be submitted in writing (preferably by using the Commission's formal GIPA access application form);
- clearly indicate the application is being made under the *GIPA Act*;
- be accompanied by the \$30 application fee;
- include the name of the applicant and an email address or postal address; and
- clearly identify the information that the applicant is seeking.

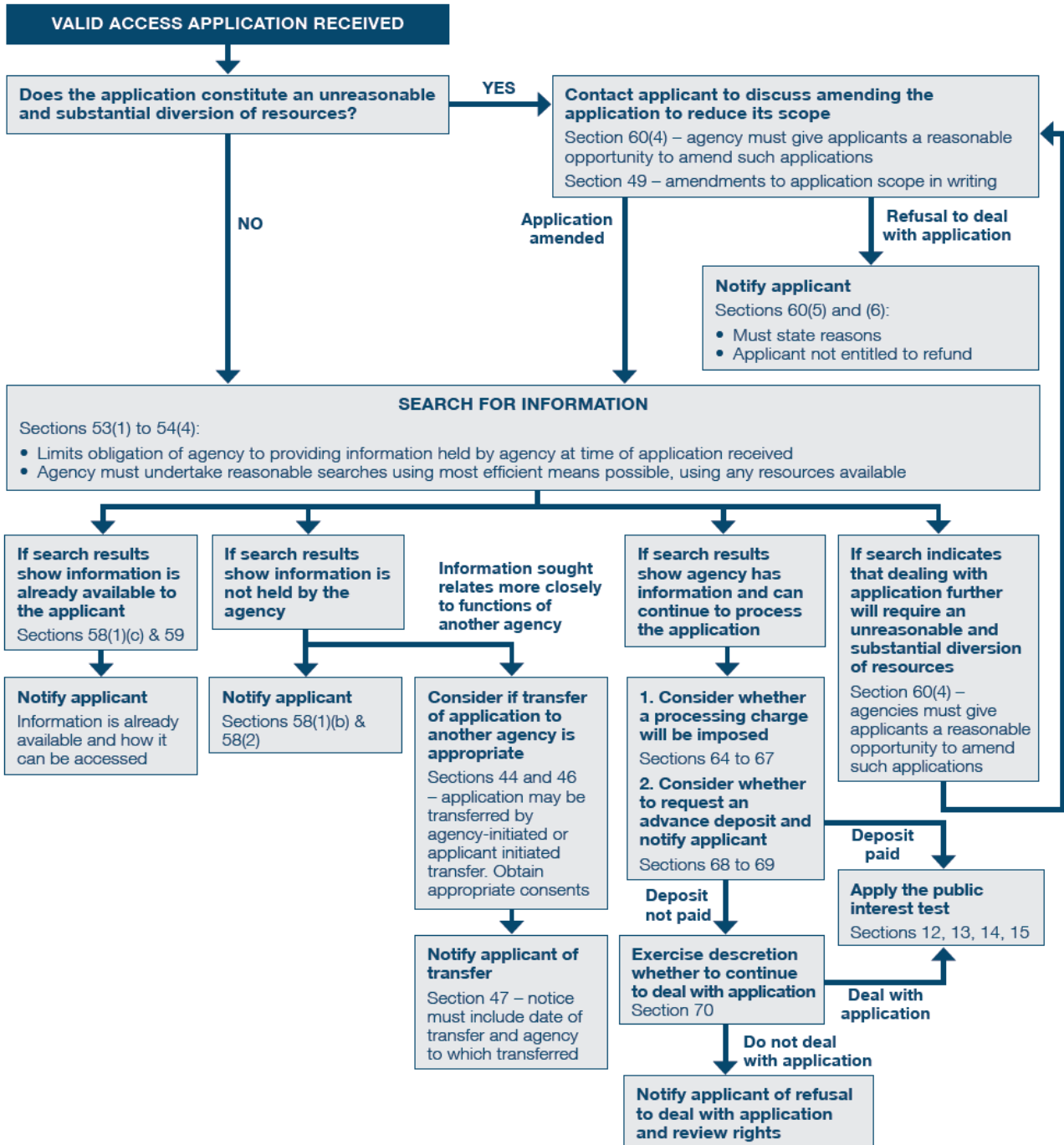
The decision to accept a formal access application as valid must be made within 5 working days after the application is received¹. The Right to Information Officer must advise the applicant (in writing) of their decision if the application is valid or not. If the application was not accepted as valid then this information must be included in the letter.

The Right to Information Officer must also provide advice and assistance to the applicant in making their application valid, so far as it would not be unreasonable use of resources.

For example, if the information requested by the applicant is difficult to interpret then the Right to Information Officer should attempt to contact the applicant and provide them with relevant advice about what information the Commission holds and would be able to provide.

¹ GIPA case law has determined that the working day ends at 11:59 PM – this means that if a GIPA application has been received to a GCC mailbox at 11:30 PM on a Tuesday then the Commission must respond with its decision to accept or reject the application by the following Tuesday.

Handling a valid application flowchart



6.2. Application fees

Sections 64 to 71 entitle the Commission to charge applicants processing fees and may refuse to provide documents until that fee is paid.

Charges include:

- an initial \$30 application fee;
- an additional processing charge of \$30 per hour - this charge does not apply if:
 - the application was not decided on time; or
 - the applicant is requesting their own information and it is recoverable within 20 hours.

Applicants are entitled to a 50% reduction of processing charges on financial hardship grounds or if the information requested is of special benefit to the public.

Refer to the NSW Information and Privacy Commission's [Guideline 2 – discounting charges](#) for more information regarding the 'special benefit' discount.

If the information requested by the applicant is released publicly before the Commission makes its decision or within 3 working days of providing the applicant with access, then the applicant is entitled to a full waiver of any processing charges.

6.3. Refusing to deal with an application

Section [60](#) of the *GIPA Act* prescribes certain circumstances where the Commission may refuse to deal with a formal access application, these include:

- where dealing with the application would require an unreasonable and substantial diversion of agency's resources;
- when the agency has already decided a previous application for the information concerned made by the applicant, and there are no reasonable grounds for believing the agency would make a different decision;
- where the applicant has previously been provided with access to the information concerned under the *GIPA Act*;
- where the applicant has failed to pay an advance deposit;
- if the information has been the subject of a subpoena or other order of a court for production of documents, and is available to the applicant as a result of having been produced in compliance with that subpoena or other order; or
- the agency reasonably believes the applicant is a party to current proceedings before a court and can apply to that court for information.

The Right to Information Officer must advise the applicant (in writing) of the decisions to refuse to deal with the application. This must outline the reason(s) for refusal and where appropriate provide advice to applicant on next steps to submitting an application that will be dealt with.

6.4. Determining unreasonable and substantial diversion of resources

The Right to Information Officer should consider if the application would incur an unreasonable and substantial diversion of resources².

The Right to Information Officer **may** consider:

- the estimated volume of information involved in the request;
- the agency's size and resources; and
- the provision of time allowed to make a decision under the *GIPA Act*.

The Right to Information Officer **must** consider:

- the considerations in favour of the disclosure of government information: and
- the demonstratable importance of the information to the applicant, including:

² GIPA case law *Colefax v Department of Education and Communities (No. 2)* [2013] NSWADT 130 – where processing would take the entire 20 working day period allowed, even in a large department this would be a unreasonable and substantial diversion of resources.

- if the information is the applicant’s personal information; or
- could the information assist the applicant in exercising their rights under any Act or law.

If search, retrieval, preliminary assessment, and copying or scanning is likely to take more than five (5) hours (and before any more than 10 hours has been expended on the work), the team providing the information should contact the Right to Information Officer.

The time expected to process the application in full should be calculated based on the assumption that all applications will take 3 times the amount of preliminary time advised by each team.

$$\text{Preliminary Time Advised (PTA)} \times 3 = \text{Estimated Total Time (ETT) to process application}$$

$$\text{(PTA) 5hrs} \times 3 = \text{(ETT) 15hrs}$$

If an application is likely to **exceed 40 hours** or 20 working days to process, it may constitute an unreasonable and substantial diversion of resources.

If dealing with an application is determined to be an unreasonable and substantial diversion of resources, then the Right to Information Officer must notify the applicant in writing.

Time must be provided to the applicant to revise the scope of their application. The time for the Commission to make a decision on the application is also paused during this period until the applicant submits the revised scope.

6.5. Timeframes

Timeframes in the *GIPA Act* are expressed as working days. This definition **does not include** the period declared by the Premier as the Christmas closedown period.

Timeframes can be extended by agreement between the applicant and the Commission. If an extension is agreed upon then the Right to Information Officer must confirm that with the applicant in writing.

Working Day	Application stage
Day 0	Application received
Day 5	Acknowledge receipt of application and decide it’s validity
Day 10	Limit for interagency transfer
Day 20	Decision due if no extension
Day 30	Decision due if third party consulted or records retrieved from archives
Day 35	Decision due if third party consulted and retrieve records from archives

6.6. Amending applications

Section [49](#) of the *GIPA Act* entitles the applicant to amend their application at any point before the Commission has made its’ decision about the application.

A notice to amend the application must be made to the Commission either verbally or in writing and the consent from the Commission must be received for the amendment to take effect. Unless the applicant wishes to reduce the scope of the application this amendment can be made without the Commission’s consent.

The Right to Information Officer must ensure that any amendments are confirmed with the applicant

in writing.

A decision by an agency to refuse to consent to an amendment is not a reviewable decision (but a separate access application can be made by the applicant).

6.7. Searching for information held

Section [53](#) of the *GIPA Act* sets out the Commission's obligations when searching for information it holds, these include:

- searching for information that was held by the Commission at the time the application was received;
- conducting reasonable searches, using the most efficient means possible; and
- using the "resources reasonably available" to retrieve electronically stored information.

The Right to Information Officer must review the application and identify the branch(s) most likely to be primarily responsible for the information sought.

The Right to Information Officer must email the details of the search request to the relevant staff for action.

Staff cannot withhold any information from the Right to Information Officer that is covered by the terms of an access application for any reason.

Failure from staff to provide information prevents the GIPA decision-maker from:

- correctly stating what information the Commission holds; and
- making a decision on the information.

It may also erroneously result in a de facto decision to refuse access which meets none of the Commission's responsibilities under the *GIPA Act* and could appear to be dishonest.

No staff member should withhold information on the basis that there is an OPIAD, or for any other reason, as this decision will be made by the Right to Information Officer.

6.8. Information provided by other agencies

If the Commission holds confidential or privileged information that has been provided by other agencies or private clients, it will not be released as part of mandatory open access information, proactive release, or informal release without consultation.

Where access to the information is sought under a formal access application, the Commission is required to consult with these third-parties before providing access to this information (s [54](#) of the *GIPA Act*).

Information captured under this section of the *GIPA Act* includes:

- personal information (about someone other than the applicant);
- information that concerns the person's business, commercial, professional, or financial interests;
or
- information that concerns the affairs of a government of the Commonwealth or another State.

The third-party may object to the release of information on these grounds or in relation to the OPIAD's. The Commission may consider these objections; however, has ultimate authority in deciding whether to release the information.

The Commission must notify the third-party of its decision and that party is able to request an internal review on the decision.

Under s [54A](#) of the *GIPA Act* the Commission may also consult with other government agencies about information that it holds. However, this is not a requirement.

6.9. Public interest considerations against disclosure

Section [13](#) of the *GIPA Act* provides a ‘**public interest test**’, which states that an OPIAD exists if the public interest considerations against disclosure on balance outweigh the considerations in favour.

The full list of considerations against disclosure can be found in the Table under s [14](#) of the *GIPA Act* and can also be found in the Commission’s PICAD Factsheet

The following are not valid considerations against disclosure and must not be taken into account:

- the fact that disclosure of information might cause embarrassment to, or a loss of confidence in the Government;
- the fact that disclosure of information might be misinterpreted or misunderstood by any person; and
- the fact that disclosure in response to an access application cannot be made subject to any conditions on the use or disclosure of information.

Where appropriate, the Right to Information Officer may seek advice from subject matter experts about certain government information and whether there may be considerations in favour or against disclosure. Once all information is considered then the Right to Information Officer will make the final decision about whether the information can be released and if any redactions should be made.

6.10. Reviewable decisions

If an applicant wishes to challenge the decision(s) made concerning their formal access application, they can do so by requesting an internal review.

A request for an internal review must be made within 20 days of the Commission notifying the applicant in writing of the outcome of the application and must be supported by an application fee of \$40. The Commission cannot charge any additional processing fees for conducting an internal review.

The internal review cannot be conducted by the original decision maker. Rather, the internal review may be conducted by:

- any Right to Information Officer not involved in making decisions about the application and no less senior than the original decision maker;
- the Director, Governance and Legal;
- the Executive Director, People and Corporate Services; or
- the Chief Executive Officer.

The internal review must be completed within 15 days of receiving the request for internal review and the applicant must be informed of the outcome in writing. Where consultation may be required then the Commission is entitled to extend the review period by 10 days.

All decisions in this Procedure (unless otherwise specified) are reviewable under pt 5 of the *GIPA Act*. Any original decision made by the Chief Executive Officer is not applicable for internal review but can be reviewed by either the Information Commissioner or the NSW Civil and Administrative Tribunal (NCAT).

Where the applicant is still aggrieved by the decision made through an internal review then they may request a review by either the Information Commissioner or the NSW Civil and Administrative Tribunal (NCAT).

7. Disclosing decisions made by the Commission

Formal access application ‘Disclosure Log’

A disclosure log is a record of all information that has been released under a formal application, which may be of interest to other members of the public.

The Right to Information Officer is responsible for maintaining and updating the disclosure log as soon as practicable after a formal access application is decided.

Under s [56\(2\)](#) of the *GIPA Act*, applicants, or any other person with whom the Commission has consulted under s [54](#) of the *GIPA Act*, may object to information from a successful application being included in the disclosure log if the information:

- includes personal information about the authorised objector (or a deceased person for whom the authorised objector is the personal representative);
- concerns the authorised objector’s business, commercial, professional, or financial interests;
- concerns research that has been, is being, or is intended to be, carried out by or on behalf of the authorised objector; and/or
- concerns the affairs of a government of the Commonwealth or another State (and the authorised objector is that government).

The Commission has the right under pt [5](#) of the *GIPA Act* to review an objection against disclosure and may disclose this information if the Commission determines that the objection is not valid or that there is an overriding public interest to disclose.

Record of open access information that has not been made available

If information has not been made publicly accessible due to an OPIAD, unreasonable additional cost, or an objection to publication, the decision must be recorded. This record will be maintained by the Right to Information Officer and will list the reasons for the information not being made publicly available.

The record will be published on the Commission’s website and reviewed annually with the assistance of the Director, Governance and Legal to ensure that the grounds for not making the information accessible are still current and valid.

8. Further information and resources

8.1. Internal Policies

- Information Access Policy
- Code of Ethics and Conduct – Staff
- Privacy Management Plan
- Electronic Document and Records Management Policy
- External Communications Policy

8.2. Legislation

NSW

- *Government Information (Public Access) Act 2009*

- *Government Information (Public Access) Regulation 2018*
- *Annual Reports (Statutory Bodies) Act 1985*
- *Annual Reports (Statutory Bodies) Regulation 2015*
- *Civil and Administrative Tribunal Act 2013*
- *Government Information (Information Commissioner) Act 2009*
- *Government Sector Finance Act 2018*
- *Government Sector Employment Act 2013*
- *Government Sector Employment Regulation 2014*
- *Privacy and Personal Information Protection Act 1998*

8.3. Other resources

NSW Civil and Administrative Tribunal.

8.4. Support and/or advice

Employee Assistance Program – (AccessEAP)

1800 818 728

info@accesseap.com.au

Safework NSW – Information, advice or assistance

13 10 50

9. Document management

Approver	Executive Director, People and Corporate Services
Author	Director, Governance and Legal Governance Officer, Governance and Legal
Revision history	Version 1 – January 2022, Version 1.1 November 2022
Next review date	January 2024
Responsible branch	People and Corporate Services Governance and Legal
CM9 Reference	DOC22/8302

Appendix

Appendix 1: Definitions

Definitions

Authorised officer(s)	<p>means officer(s) authorised delegated by the Chief Executive Officer to release government information in accordance with s 7(5), 8(6) and 9(3) of the GIPA Act. Authorised officers include:</p> <ul style="list-style-type: none"> • Right to Information Officer; and • Senior executive managers in relation to ss 7 and 8 only.
Commercial in confidence provisions	<p>of a contract means any provisions of the contract that disclose —</p> <ol style="list-style-type: none"> a) the contractor’s financing arrangements, or b) the contractor’s cost structure or profit margins, or c) the contractor’s full base case financial model, or d) any intellectual property in which the contractor has an interest, or e) any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.
Contractor	<p>in relation to a government contract entered into by an agency, means the person with whom the agency has entered into the contract.</p>
Disclose	<p>information includes make information available and release or provide access to information.</p>
Government information	<p>means information contained in a record held by an agency.</p>
Overriding Public Interest against Disclosure (OPIAD)	<p>means there is an overriding public interest against the disclosure of certain information as defined by s 14 and sch 1 of the <i>GIPA Act</i>.</p>
Person	<p>includes an agency, the government of another jurisdiction (including a jurisdiction outside Australia) and an agency of the government of another jurisdiction.</p> <p>Note —</p> <p>This definition does not limit the definition of person in the Interpretation Act 1987, which includes an individual, a corporation and a body corporate or politic.</p>
Personal information	<p>means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.</p> <p>Personal information includes such things as an individual’s fingerprints, retina prints, body samples or genetic characteristics.</p> <p>Personal information does not include information about an individual:</p> <ol style="list-style-type: none"> a) who has been dead for more than 30 years;

	<p>b) that reveals nothing more than the fact that the person was engaged in the exercise of public functions or</p> <p>c) that is of a class, or is contained in a document of a class, prescribed by the regulations for the purposes of sch 4 s 4.</p>
<p>Record</p>	<p>means any document or other source of information compiled, recorded, or stored in written form or by electronic process, or in any other manner or by any other means.</p> <p>1) A reference in this Act to a record includes a reference to a copy of the record.</p> <p>For the purposes of the definition of record in this Act, the knowledge of a person is not a record.</p>
<p>Right to Information Officer</p>	<p>means an officer(s) appointed by the Chief Executive Officer and authorised to manage the Commissions obligations under the <i>GIPA Act</i> with specific reference to div 1.</p> <p>Refer to 4. Key responsibilities for more information.</p>

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