

Government Information (Public Access) Act 2009 (GIPA Act) Rights of Reviews – Internal and External

What is the purpose of this information sheet?

This information sheet sets out your rights of review as an applicant in respect of a decision of an access application under the GIPA Act. It also outlines the review rights of a third party (referred to in the GIPA Act as an authorised objector).

What decisions are subject to review?

You have a right to request a review of a decision regarding the release of information if you disagree with any of the following decisions as set out under section 80 of the GIPA Act:

- (a) A decision that your application is not a valid access application
- (b) A decision to transfer an access application to another agency, as an agency-initiated transfer
- (c) A decision to refuse to deal with an access application (including a decision that is deemed to have been made ie. if your application was not decided on time)
- (d) A decision to provide access or to refuse to provide access to information
- (e) A decision that government information is not held by an agency
- (f) A decision that information applied for is already available to you
- (g) A decision to refuse to confirm or deny that information is held by an agency
- (h) A decision to defer the provision of access to information
- (i) A decision to provide access to information in a particular way (or a decision not to provide access in the way requested by you)
- (j) A decision to impose a processing charge or to require an advance deposit
- (k) A decision to refuse a reduction in a processing charge
- (l) A decision to refuse to deal further with your access application because you failed to pay an advance deposit within the time required for payment
- (m) A decision to include information in a disclosure log despite your objections (or a decision that you were not entitled to object).

A third party can ask for a review of a decision to provide access to information and/or to include information in a disclosure log contrary to their objections, points (d) and (m) above.

There are three avenues of review available to you, an internal review or an external review by the Information Commissioner and/or by the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT).

1. INTERNAL REVIEW

What is an internal review?

An internal review must be carried out by an officer who is no less senior than the person who made the original decision. The review decision must be made as if it was a fresh application and the internal review officer should have had no dealings with processing the original decision.

If you are a third party, you must apply for an internal review before you can seek a review by the Information Commissioner; however, you do not have to have an internal review if you want to go straight to NCAT for a review.

How much does it cost?

There is a \$40 application fee for an internal review application. You do not have to pay an application fee if your original application was not decided on time (i.e. it was a deemed refusal). No other fees or charges apply to internal review applications.

When should I lodge an internal review application?

You have **20 working days** after the notice of a decision has been posted to you to ask for an internal review. Where a decision was not made in time (deemed refusal) you have 20 working days from the due date to lodge your internal review application. A late application will only be accepted if there are good reasons why the deadline was unable to be met.

How do I ask for an internal review?

You can fill out an application form or apply by way of a letter. Ask a Right to Information/Privacy Officer to assist you (ph: (02) 9995 6080 or 9995 6497) A form can also be downloaded from www.environment.nsw.gov.au/whoweare/information.htm .

When will I be advised of the outcome of the review?

An internal review decision must be made within 15 working days after your application is received. This can be extended by up to 10 working days if consultation is required with another person who wasn't previously consulted. Sometimes the review officer may need to take a little longer. In that case, the officer will contact you and seek your agreement to an extension.

2. REVIEW BY THE INFORMATION COMMISSIONER

If you disagree with any of the decisions listed above, you can ask for a review by the Information Commissioner. (www.ipc.nsw.gov.au). No fees or charges apply. You cannot ask for a review by the Information Commissioner if you have asked for a review by the NCAT.

If you are a third party, you must apply for an internal review first before you can ask for a decision to be reviewed by the Information Commissioner.

When should I lodge an application with the Information Commissioner?

You must apply to the Information Commissioner for a review within **40 working days** after you are advised of the decision or after the decision due date has passed (deemed refusal).

What can the Information Commissioner do in considering a review application?

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency, but cannot release the information sought under an access application.

3. REVIEW BY THE NCAT

If you disagree with any of the decisions listed above, you can ask for a review by the NCAT.

You have up to **40 working days** from being notified of the decision to apply to the NCAT for a review. However, if you have applied for a review by the Information Commissioner, you have **20 working days** from being notified of the Information Commission's review outcome to apply to the NCAT. Contact the NCAT for information concerning any fees that may be payable.

How do I get more information about reviews?

1. Contact a **Right to Information/Privacy Officer**:
Ph: (02) 9995 6080 or 9995 6497 or 9995 6040
Website: www.environment.nsw.gov.au/whoweare/information.htm
2. Contact the **Information and Privacy Commission**:
Ph: 1800 472 679.
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au
3. Contact the **Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT)**:
Ph: 1300 006 228
Website: www.ncat.nsw.gov.au