

# Right to Information policy

## How FACS complies with its obligations, and how a member of the public may exercise the right of access to information held by the Government under the GIPA Act

[View as chapters](#)

### Background

From 1 July 2010 the [Government Information \(Public Access\) Act 2009 \(GIPA Act\)](#) replaced the Freedom of Information Act 1989 (FOI Act). The GIPA Act is designed to promote a fair, transparent and open government for the people of New South Wales. The Department of Family and Community Services (FACS) as an agency is required to publish as much information as possible, and respond to other requests for information.

This policy sets out how FACS complies with its obligations, and how a member of the public may exercise the right of access to information held by the Government under the GIPA Act.

The GIPA Act specifies information that must be disclosed on an agency's website, or otherwise made available free of charge. The GIPA Act also encourages publication of other information that may be in the public interest. This information will be available free of charge, or at the lowest possible cost to persons seeking such information.

A formal access application, previously known as a Freedom of Information request, can be made by any member of the public for information held by FACS. A client of FACS may apply for information relating to services they may have received from FACS, or information FACS may hold about themselves. Information of a non-personal nature may also be requested as part of a formal access application. Fees and charges will be applicable.

The GIPA Act also allows for FACS to release information informally. This may be information relating to policies or any other information that is available on the FACS website. A client of FACS may obtain limited information from their file without the need for a formal access application.

For additional assistance relating to accessing information under the GIPA Act, or general enquires, please contact our Right to Information Unit (previously known as the FOI Unit)

## **The Right to Information Unit**

[\(02\) 9716 2662](tel:(02)97162662)

## **Scope**

This policy applies to FACS when publishing information, or responding to an informal or formal request for information under the GIPA Act.

The policy outlines how a client of FACS, and any other member of the public can use the GIPA Act to obtain access to information held by FACS.

As of 1 July 2010, specific information held by a contractor engaged by FACS to provide a service to the public on FACS' behalf will also be information that may be requested under the GIPA Act.

## **Policy statement**

FACS is required by the GIPA Act to provide access to a member of the public to obtain information held by this Agency. This is a legally enforceable right under the GIPA legislation. FACS is committed to openness and transparency in carrying out its functions, to publish information in accordance with the GIPA Act, and to disclose information in response to an informal request or formal access application, unless to do so would be contrary to the public interest.

## **Publication of government information**

The FACS Open Access Information is a mandatory requirement in accordance section 6 of the GIPA Act.

On the FACS Open Access Information webpage you will find the following types of information which may be of interest to the public:

- Policy Documents.
- Documents tabled in Parliament.
- Agency Information Guide.
- Register of Government Contracts.
- Disclosure Log.

In addition to this information, a wide range of other published materials are available at [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au) . If persons are unable to access this information via the internet, they may visit any Client Service Office or contact the Right to Information Unit

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FACS will review its Agency Information Guide at intervals no less than 12 months and will continue to update its website to provide you with the best possible information relating to our functions and services to all members of the general public.

## **Informal requests**

Any member of the public has a legal right to make an informal request for access to information held by FACS. This includes access to personal and non-personal information held by FACS. As part of an informal request, a person may be entitled to request information free of charge, such as:

- a copy of their Tenancy Agreement with FACS Housing
- a property Condition Report relating to their tenancy
- a copy of their assistance forms they lodged with FACS
- a copy of their correspondence with FACS
- a copy of Incident Report
- information from our websites, e.g [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au)
- information that has been made publicly available in the past.

An informal request for other non-personal information that does not involve information about another person, or otherwise sensitive information, may be considered.

Any informal request for information will be processed as soon as practicable. FACS reserves the right to refuse access to an informal request for information.

The release of information in response to an informal request is subject to following conditions:

- An estimated time limit of two hours is applicable when processing an informal request for access to information. In the event that it would exceed this time limit, an applicant will be advised to lodge a formal access application.
- Information relating to a third party will not be considered as part of an informal request. However, this does not override an applicant's legal right to apply for this type of information as a formal access application.
- Information relating to sensitive matters will not be considered as part of an informal request. However, this does not override an applicant's legal right to apply for this type of information as a formal access application.

FACS will endeavour to accommodate any informal request where ever possible in accordance with the objectives of the GIPA Act.

A decision that is made in response to an informal request is not subject to any legal review rights under the GIPA Act.

An applicant who is not given information in response to an informal request will be informed of their right to make a formal access application under the GIPA Act.

An applicant will be required to complete an Informal Request for Information form to access information informally. However, information from the FACS website or that has been made publicly available will not require an application form. An Informal Request for Information form may be lodged with the [Right to Information Unit](#).

Requests for a copy of all information from an applicant's FACS file will require a formal access application.

## **Formal Access Applications**

A formal access application is necessary when the information sought is not published, is information relating to an applicant's entire records or other information held by FACS that is not available in response to an informal request.

Should a formal access application seek information concerning a service delivered to the public by a contractor of FACS entered into from 1 July 2010, the contractor is to provide the information to FACS for the purpose of processing the application, in accordance with section 121 of the GIPA Act. FACS has a legal right to obtain information held by the contractor that relates to:

- the performance of the service
- has been collected by the contractor from a member of the public
- was received by the contractor from FACS to facilitate delivery of a service.

The Right to Information Unit, FACS Legal is responsible for all aspects of the management and processing of formal access applications. An application should be made direct to the Right to Information Unit or forwarded promptly to the Unit if received elsewhere in FACS. This is crucial as there are statutory deadlines that FACS must comply with in accordance with the GIPA Act.

## How to make an application

An application can be made for information held by FACS, or in some circumstances held by a contractor. All applications must contain the following information:

- Must be in writing and sent to the address stated below.
- Clearly state that the information is being sought under the GIPA Act.
- Be accompanied by the application fee of \$30 in the form of a money order or cheque made payable to FACS.
- Must have a return postal address.
- Include a valid copy of the applicant's Health Care Card or Pensioner Concession Card, if this is applicable.
- Must include as much specific information as possible to assist us to identify the information you are requesting.

Applications should be addressed to:

### **The Manager**

Right to Information Unit  
FACS  
Locked Bag 4028  
Ashfield NSW 2131

## Fees and charges

A Formal Access Application is subject to the following fees and processing charges:

| Type of Information                            | Application Fee | Processing Charges   |
|--|-----------------|--|
| Access to information of a personal nature     | \$30.00         | The first 20 hours is covered by the application fee after that there will be a charge of \$30.00 per hour |
| Access to information of a non personal nature | \$30.00         | A processing charge of \$30.00 per hour is applicable for non personal information                         |
| Internal Review of a decision                  | \$40.00         | Not applicable   |

An applicant may be eligible for a 50% discount on application and processing charges if the applicant:

- holds a valid Pensioner Concession Card
- holds a valid Healthcare Card
- is a full-time student
- is a non-profit organisation (including a person applying for or on behalf of a non-profit organisation)
- is suffering financial hardship
- is applying for information that is of special benefit to the public.

An advance deposit of up to 50 per cent of the total estimated processing time may be requested by FACS. This will happen after consideration of the application and an assessment of the chargeable time required to identify and consider the release of relevant information. Should this be applicable to an application an applicant will be advised of the estimated processing charge and will be given at least four weeks for payment.

## What happens after you lodge a Formal Access Application

FACS will contact you if it is necessary to clarify any aspect of the application.

You will receive an acknowledgment letter within five working days advising that you have lodged a valid formal access application.

FACS will make a decision on the application and notify the applicant within 20 working days. This time can be extended by 10 to 15 days where the GIPA Act requires consultation with a third party or the retrieval of records from archives. A request for an advance deposit may also extend the statutory time period.

A formal access application can only be made for information held at the time the application is received.

FACS is required to consult with a third party in some circumstances, where an applicant requests information that contains:

- personal information about another person
- business information of a third party (including another government agency)

- information concerning the affairs of the Commonwealth Government or another state government.

## **Making a decision on a Formal Access Application**

A decision on a formal access application can only be made by an officer of FACS who is authorised by the Secretary of the Department of Family and Community Services.

FACS must refuse access to certain information outlined in Schedule 1 of the GIPA Act, as there is a conclusive presumption of an overriding public interest against disclosure. Examples of these certain types of information include:

- Information that was prepared for the dominant purpose of submission to Cabinet.
- Information subject to legal professional privilege.
- Information contained within a report made under the Children and Young Persons (Care and Protection) Act 1998.

Where an access applicant requests information that does not fall within one of the specified categories of information listed in Schedule 1 of the GIPA Act, FACS must apply a public interest test. The public interest test requires FACS to consider public interest considerations favouring disclosure of the information requested, and weigh them against the public interest factors that do not favour disclosure of the same information.

Examples of public interest factors favouring the disclosure of information include the following:

- Promote discussion of public affairs.
- Enhance accountability.
- Inform the public about the operations of agencies.
- Ensure effective oversight of the expenditure of public funds.
- Reveal or substantiate misconduct or negligent, improper or unlawful conduct.

The above factors that favour disclosure are then weighed against any public interest considerations against disclosure. The public interest considerations against disclosure are listed in the GIPA Act, examples of which are:

- Disclosure would prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions.
- Would reveal an individual's personal information.
- Disclosure could reasonably diminish the competitive commercial value of any information to any person, or prejudice any person's legitimate business, commercial, professional or financial interests.

## **Notice of Decision**

A written notice of the decision will be provided to an applicant within 20 working days unless it is subject to any extension. Any decision to refuse access will include reasons for the decision.

## **Payment of fees**

Should any charges be payable, access will be given to the information only when payment is received.

## Rights of Review

A person aggrieved by a FACS decision has three options for review:

1. Internal review.
2. External review by the Information Commissioner.
3. External review by the New South Wales Civil and Administrative Tribunal.

An Internal Review may be sought within 20 working days of a notice of decision. The application must be accompanied by the appropriate fee of \$40. FACS will arrange for the review to be undertaken by an authorised officer who did not make the original decision and is not subordinate to the original decision maker. A notice of decision regarding an internal review will be issued within 15 working days.

Alternatively, an independent review may be sought from the Information Commissioner or the New South Wales Civil and Administrative Tribunal.

A complaint can also be made to the Information Commissioner if you have concerns on how your application was handled.

### **The Information and Privacy Commission New South Wales**

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

Phone: [1800 472 679](tel:1800472679)

## Legislation and compliance

FACS complies with the [Government Information \(Public Access\) Act 2009](#). An annual report on the management of its functions will be prepared for the Minister as required by law.

## Right to Information, Government Information (Public Access) Act 2009 forms

Further Information can be accessed from the [Information and Privacy Commission New South Wales](#) and the [New South Wales Civil and Administrative Tribunal](#)