



## Your review rights under the GIPA Act

## Fact sheet

May 2018

The right to information system in NSW aims to foster responsible and representative government that is open, fair and effective.

You have the right to request a review of certain decisions<sup>1</sup> made by government agencies about the release of information under the *Government Information (Public Access) Act 2009* (GIPA Act):

- a) a decision that an 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 such a decision that is deemed to have been made)
- d) a decision to provide access or to refuse to provide access to information in response to an access application
- e) a decision that government information is not held by the agency
- f) a decision that information applied for is already available to the applicant
- g) a decision to refuse to confirm or deny that information is held by the agency
- h) a decision to defer the provision of access to information in response to an access application
- i) a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- 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 an access application because an applicant has failed to pay an advance deposit within the time required for payment

- m) a decision to include information in a disclosure log despite an objection by the authorised objector (or a decision that the authorised objector was not entitled to object).

You generally have three review options.

### 1. Internal review

You have **20 working days**<sup>2</sup> after the notice of a decision has been given to you to ask for an internal review by the agency that made the decision. An agency may accept an application for internal review out of time, but is not obliged to do so.<sup>3</sup>

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review<sup>4</sup>, but you can ask for an external review.

The review must be carried out by an officer who is no less senior than the person who made the original decision.<sup>5</sup> The review decision must be made as if it was a fresh application.<sup>6</sup>

There is a \$40 fee for an internal review application. An agency may choose to waive the internal review fee.<sup>7</sup>

No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time<sup>8</sup> or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under section 93 of the GIPA Act.<sup>9</sup> In this case, you cannot be charged any review fee.

The agency must acknowledge your application within **five** working days of receiving it.<sup>10</sup> The agency must decide the internal review within **15** working days<sup>11</sup> (this can be extended by **10** working days if

<sup>1</sup> Section 80 GIPA Act

<sup>2</sup> Section 83(1) GIPA Act

<sup>3</sup> Section 83(2) GIPA Act

<sup>4</sup> Section 82(2) GIPA Act

<sup>5</sup> Section 84(2) GIPA Act

<sup>6</sup> Section 84(1) GIPA Act

<sup>7</sup> Section 127 GIPA Act

<sup>8</sup> Section 85(2) GIPA Act

<sup>9</sup> Section 93(6) GIPA Act

<sup>10</sup> Section 83(3) GIPA Act

<sup>11</sup> Section 86(1) GIPA Act

the agency has to consult with a third party not previously consulted<sup>12</sup>, or by agreement with you<sup>13</sup>).

## What is a working day?

A working day is defined as any day that is not a Saturday, a Sunday or a public holiday.<sup>14</sup>

The close down for Christmas/ New Year is not excluded from the meaning of working day, so that only those days in the close down period that are Saturdays, Sundays or public holidays are excluded from working days for the purposes of calculating time in the GIPA Act.

## What do the words 'given to' mean?

A recent Tribunal decision, *Choi v University of Technology Sydney* [2017] NSWCATAD 198 considered the meaning of the words 'given to' in looking at whether an application for internal review had been made within time.

The question before the Tribunal in *Choi* was about giving a notice of decision by email however the Tribunal in looking at the words "given to" also looked at decisions being given to a person by post.

In *Choi*, at [23], the Tribunal's reasoning was that the words "given to" have their ordinary meaning of "delivered" or "handed over".

The Tribunal in *Choi* at [24] to [25] also referred to previous decisions of Tribunals which considered the question of when a decision may be given to a party by posting a letter, served by post, which is when the letter would be delivered in the ordinary course of the post, unless it can be proved otherwise.

The Tribunal in *Choi* found that the notice was given to the applicant when it was received by email.

The Tribunal observed that the email notice was sent by the agency to the Applicant and there was no dispute that the email was received. In those circumstances the Tribunal could not be satisfied that there was a reasonable excuse for the Applicant's delay in lodging a request for administrative review to the Tribunal.

## What is service by post?

Section 76 of the *Interpretation Act 1987* provides that:

- (1) If an Act or instrument authorises or requires any document to be served by post (whether the word "serve", "give" or "send" or any other word is used), service of the document:

- (a) may be effected by properly addressing, prepaying and posting a letter containing the document, and
- (b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth working day after the letter was posted, and
- (c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of post.

## 2. External 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.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the Information Commissioner to review it.<sup>15</sup>

If you are not the access applicant, you **must** seek an internal review before applying for review by the Information Commissioner. However, if an internal review cannot be sought (if a Minister or their personal staff, or the principal officer of an agency made the decision), you can seek a review by the Information Commissioner.<sup>16</sup>

You have **40 working days**<sup>17</sup> from being notified of the decision to ask for a review by the Information Commissioner.

There is not a provision in the GIPA Act that enables the Information Commissioner to accept applications out of time. On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

**Note:** You cannot ask the Information Commissioner to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal (NCAT)<sup>18</sup>.

## 3. External review by the NSW Civil and Administrative Tribunal (NCAT)

If you disagree with any of the decisions listed above, you can ask for a review by NCAT. You do not have to have the decision reviewed internally, or by the

<sup>12</sup> Section 86(2) GIPA Act; IPC Fact Sheet [Why consult third parties: Guideline 5 Consultation on the public interest considerations](#)

<sup>13</sup> Section 86(4) GIPA Act

<sup>14</sup> Clause 1, Schedule 4 to the GIPA Act

<sup>15</sup> Section 89 (2)(a) GIPA Act

<sup>16</sup> Section 89 (2)(b) GIPA Act

<sup>17</sup> Section 90 GIPA Act

<sup>18</sup> Section 98 GIPA Act

Information Commissioner before applying for review by NCAT.

You have **40 working days**<sup>19</sup> from being notified of the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days**<sup>20</sup> from being notified of the Information Commission's review outcome to apply to NCAT.

## For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

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<sup>19</sup> Section 101(1) GIPA Act

<sup>20</sup> Section 101(2) GIPA Act