

Unclassified



NSW Police Force

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The Government Information (Public Access) Act 2019

Guidelines & Procedure

InfoLink, PoliceLink Command

Unclassified

The GIPA Act - Guidelines & Procedure

This document outlines the core requirements for the NSW Police Force to comply with the *Government Information (Public Access) Act 2009* (the GIPA Act). It provides a guide as to what NSW Police Force staff, commands and units need to know and do to ensure that statutory compliance with the GIPA Act is met.

Essential Summary

This document outlines the roles, responsibilities and procedures for complying with requests made by the public for information held by the NSW Police Force.

Though particular roles hold specific corporate responsibilities for complying with the GIPA Act, such compliance most often requires the assistance of other staff. As such this document applies to all NSW Police Force employees.

To assist NSW Police employees to understand the statutory obligations that apply under the GIPA Act and what procedures are in place to ensure our compliance, this document addresses the following important matters:

- An overview of the GIPA Act
- Roles and Responsibilities for the NSW Police Force GIPA Act function
- Procedures for responding to a request for information under the GIPA Act
- How to conduct searches for information to satisfy a GIPA application
- How to provide information found
- How to raise objections to the disclosure of information
- Identifying matters that are serious, unusual, newsworthy and/or controversial
- Accountability, compliance, oversight and reporting

Document Control Sheet

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Table of Contents

Essential Summary	2
Message	5
1. Purpose	6
2. Scope	6
3. Procedures	7
3.1 Context: The GIPA Act at a Glance	7
3.2 Roles and Responsibilities	8
3.3 Responding to a search request received from InfoLink	9
3.4 Accountability, Compliance, Oversight and Reporting	13
Appendix 1	14
Appendix 2	17
Appendix 3	19

Message

In line with NSW Government priorities, the NSW Police Force is committed to being an open, transparent and accountable government agency.

As an agency we are entrusted by the community with the task of law enforcement in NSW. The community is entitled to know how we, as their police force, are performing.

To maintain this trust, it is imperative that we share information with the community where it is appropriate to do so.

To that end, it is the expectation of the NSW Police Force executive that all staff support the NSW Police Force GIPA Act function and diligently undertake all tasks requested of them to achieve this.

Mal Lanyon APM
Deputy Commissioner
Corporate Services

1. Purpose

This document has been created to support the NSWPF with its GIPA Act function.

The objective of this document is to inform and provide guidance to NSWPF employees on:

- The GIPA Act, how it works and what this means for the NSWPF;
- The GIPA Act statutory obligations that apply to the NSWPF;
- Roles and responsibilities that apply within the NSWPF GIPA Act function;
- Risks and consequences for failure to comply with this document and the GIPA Act.

2. Scope

This guideline document and the GIPA Act applies to:

- All NSWPF employees;
- All records held by the NSWPF.

3. Procedures

3.1. Context: The GIPA Act at a Glance

Background

The GIPA Act replaced the *Freedom of Information Act 1989*.

The purpose and object of the GIPA Act is to promote an open, accountable, fair and effective government by:

- (a) encouraging government agencies to proactively release information they hold;
- (b) giving members of the public an enforceable right to access government information; and
- (c) ensuring that access to government information is withheld only where there is an overriding public interest against its disclosure.

How does the public get access to government information?

The public can access government information in the following ways:

- (a) Some information is made publicly available by a government agency (for example on its website);
- (b) Some information can be provided to the public informally;
- (c) Some information is provided in response to a formal application made by a member of the public.

Formal GIPA applications are handled, processed and decided by the InfoLink Unit, which is part of the PoliceLink Command, with the assistance of external commands to identify and retrieve the information sought.

What information can be released to the public?

The starting point is that government information ought to be released.

The GIPA Act enshrines a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure. In other words, when government information is sought, the starting point is that it must be released. It is only when an agency can identify and justify that there is an overriding public interest against disclosure that an agency can withhold the information sought.

What is an overriding public interest against disclosure?

In short, an agency must consider the reasons in favour of disclosure and those reasons against disclosure of government information. If the reasons against disclosure outweigh those in favour of disclosure, there is an overriding public interest against disclosure.

What role do commands external to InfoLink play in the NSW Police Force GIPA Act functions?

While InfoLink, as delegated decision maker, receives and processes applications on behalf of the NSW Police Force and makes the ultimate decision as to whether or not information ought to be released, commands external to InfoLink play an important role by:

- (a) Identifying whether or not the information sought by the public is held by the NSW Police Force and conducting reasonable searches for that information;
- (b) Retrieving that information;
- (c) Providing the information to InfoLink in accordance with the timeframes and instructions outlined by InfoLink;
- (d) Providing advice (and detailed reasons) to InfoLink about whether or not there are any risks in releasing the information, so that InfoLink can take that into consideration when deciding whether or not the information should be disclosed.

3.2. Roles and Responsibilities

InfoLink

InfoLink holds the delegated responsibility for receiving, processing and making decisions in response to GIPA applications made by the public.

While InfoLink can itself, in many cases, retrieve information responsive to a GIPA application, often InfoLink relies on other commands to provide InfoLink with information that only that command has access to. In these circumstances InfoLink relies on such commands to conduct proper and reasonable searches for information and to do so in a timely manner in accordance with timeframes set by InfoLink in order to comply with those set by the GIPA Act.

To comply with the GIPA Act, InfoLink must respond to an application for information within 20 working days. This 20 working day limit commences on the day the application is received by the NSWPF. Within this time period, InfoLink must:

- (a) receipt the application;
- (b) determine whether or not the application is valid;
- (c) bank the application fee;
- (d) clarify the scope of the application with the applicant;
- (e) determine which NSW Police Force command or unit holds the information and send out a request for that information. On receipt, collate all results;
- (f) review all information received, determine whether or not reasonable searches for the information were undertaken, consider all information and whether or not any information can be withheld taking into account any objections raised by a NSW Police Force command / unit;
- (g) make any necessary redactions to the records;
- (h) write a Notice of Decision to issue to the applicant outlining what information was found, the decision as to whether or not information will be released and the reasons for that decision referencing the relevant provisions of the GIPA Act.

Commands and Business Units

As the owners / custodians of information that may be requested by an applicant, NSW Police Force commands and units play a vital role in ensuring:

- (a) that all information answerable to a GIPA application is located and provided to InfoLink within 10 calendar days of receiving a request from InfoLink for such information, and
- (b) that any relevant consideration as to whether or not information ought to be disclosed or withheld, is made known to InfoLink to take into account when deciding whether to release information or not.

The following specific roles and responsibilities have been endorsed by the NSW Police Force executive as at 1 August 2019.

Executive Officers (or a nominated equivalent where there is no such position) hold command/unit responsibility for receipting, monitoring and finalising requests for information received from InfoLink.

Police Area Managers (or a nominated equivalent where there is no such position) hold command/unit responsibility for resolving escalated requests where information has not been provided to InfoLink by the due date (10 calendar days).

Commanders / Directors (or a nominated equivalent where there is no such position) hold responsibility for their command / unit's performance in answering to requests made under the GIPA Act.

InfoLink maintains a list of all commands / units and their contact details for the above roles including the nominated SMACBOX identified by each command / unit for receiving information requests from InfoLink. It is the responsibility of each command / unit to inform InfoLink of any changes to those contact details as and when those changes occur. Changes can be made by notifying InfoLink by email to #GIPATRACE.

The holders of the above responsibilities will be held accountable through a reporting process outlined in Section 3.4 of this policy.

3.3. Responding to a search request received from InfoLink

When a command / unit has been identified by InfoLink as the holder of information that is the subject of a GIPA application, the command / unit's nominated SMACBOX will receive a search request email from InfoLink. An example of the template used is attached at Appendix 1.

To ensure that the NSW Police Force complies with the relevant obligations under the GIPA Act, a command / unit will need to:

- (a) Undertake reasonable searches for the information requested;
- (b) Provide InfoLink with the information located as soon as possible and in any case within the 10 calendar day period allowed for answering the request sent by InfoLink;
- (c) Follow all instructions set out on the GIPA Instruction Sheet (Appendix 1);
- (d) Complete all fields on the GIPA Instruction Sheet.

What is considered a reasonable search?

Section 53 of the GIPA Act states that a government agency is only obligated to provide information that existed at the time that the GIPA application was lodged. Therefore information that came into existence after this point in time is not required to be searched for.

Section 53 requires agencies to undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. An agency's searches must be conducted using the most efficient means reasonably available to the agency.

To justify that the searches undertaken were reasonable, a command / unit should ensure that it provides InfoLink with a detailed account of what searches were made. This can be done on the GIPA Instruction Sheet (Appendix 1). In addition to the questions asked and standard documents listed on that form, commands / units should provide the following information within the free text box at point 7 of that sheet:

- (a) If searches were undertaken of an electronic system, specify the process undertaken and/or search terms used to identify information relevant to the request;
- (b) If searches were undertaken of a paper-based system, specify how the information is stored and how searches were undertaken to identify information relevant to the request.

Importantly, keep a log of the time spent in responding to the search request as the NSW Police Force can impose processing fees for the time spent dealing with a GIPA application. The total time spent should be reported to InfoLink on the GIPA Instruction Sheet. The total time spent can include all things including: clarifying the request with InfoLink, undertaking searches for information, retrieving and collating the information located, obtaining internal advice about whether or not the information ought to be released, reporting back to InfoLink on the GIPA Instruction Sheet and via any other report document as required.

Of note, if an applicant seeks a review of a decision made by the NSW Police Force, in response to a GIPA application, part of that review is often about whether or not reasonable searches have been undertaken to find the information that is sought. In these circumstances the NSW Police Force may be required to provide evidence to a Tribunal of the searches undertaken. Without a record of what searches were undertaken, the NSW Police Force is unable to justify its position and will likely be asked to undertake further searches. Additionally, the person who undertook the searches will likely be required to give evidence of what searches were undertaken.

What happens if the person who holds the information is away?

As a government agency the expectation is that records held can be retrieved without reference to a specific individual. Hence, if someone who is best placed to find a record (eg, OIC of an investigation) is away from the workplace, searches for that record need to be completed despite their absence. While it may be more convenient to undertake the searches with that person's assistance, unless an applicant agrees to an extension of time, the statutory time frames determined by the GIPA Act nevertheless apply. As such this necessitates that searches be undertaken and completed without that person's help.

Providing located records to InfoLink

The GIPA Instruction Sheet (Appendix 1) provides detailed instructions about how to return any records located to InfoLink.

InfoLink requires commands / units to provide InfoLink with all information located, whether or not it is considered sensitive. InfoLink has delegated responsibility to make decisions under the GIPA Act and cannot discharge its duties without reviewing the information that is answerable to a GIPA application. There are very few exceptions to this rule. They are:

- (a) The information requested can be provided to the applicant free of charge in accordance with a NSW Police Force policy (for eg, ICV for a matter before the courts);
- (b) The information requested benefits from a conclusive presumption that there is an overriding public interest against disclosure (discussed below).

If a command / unit is of the view that one of the above exceptions apply, it must outline this in the returned GIPA Instruction Sheet.

For any records that a command / unit provides to InfoLink, such must be provided unredacted, unless redactions are made simply to omit information that is not within scope of the GIPA application (for eg, redacting parts of a police notebook page that relate to a different incident).

In accordance with the instructions on the GIPA Instruction Sheet, retrieved documents are to be provided to InfoLink via RMS. Importantly, once this is done, InfoLink requires a return email to #GIPATRACE to notify InfoLink that the documents have been uploaded to RMS. This ensures no delay in InfoLink processing and reviewing those uploaded documents.

Objecting to the release of information

As stated in Section 3.1 of this document, an agency can only withhold information that is requested under the GIPA Act if there is an overriding public interest against disclosure. There is an overriding public interest against disclosure only when, having considered the reasons in favour of disclosure and those reasons against disclosure of government information, on balance those reasons against disclosure outweigh those in favour of disclosure.

While the GIPA Act allows for unlimited factors in favour of disclosure to be considered, it only allows certain factors against disclosure to be considered. Those factors are specified in a table within section 14 of the GIPA Act (Appendix 2).

There are also some limited circumstances in which information simply cannot be released under the GIPA Act. The GIPA Act has identified particular classes of information for which there is a conclusive presumption against disclosure. In other words, the GIPA Act deems that there is an overriding public interest against disclosure of this information. Schedule 1 of the GIPA Act lists the information for which the conclusive presumption applies (Appendix 3). Where information falls within a class of information to which the schedule applies, it cannot be released.

When a command / unit responds to a search request from InfoLink it should outline, in the form of a report accompanying the GIPA Instruction Sheet, whether or not it has any objection / opposition to the information being released to the applicant. While commands / units can consider the section 14 factors at Appendix 2 when raising such objections, it is most helpful if commands / units simply state what the concerns / issues / risks are if the information were to be released.

InfoLink can then assess those and determine firstly whether or not they fall within one of the section 14 factors against disclosure and if they do, whether or not they outweigh the factors identified as being in favour of disclosure.

In determining whether or not an objection ought to be raised to the release of information, it is worth noting that:

- (a) release of information under the GIPA Act cannot be done with conditions attached. As such, once it is released an applicant can deal with the information in any manner they wish;
- (b) objections need to be able to be justified and evidence based. Under the GIPA Act the agency withholding information bears the onus of justifying its position. In the event that an applicant seeks a review of a decision to refuse to disclose information, an agency will be required to justify its decision and if that is before the NSW Civil and Administrative Tribunal, it will need to be justified by sworn evidence.

Serious, Unusual, Newsworthy and / or Controversial

InfoLink has a process whereby the NSW Police Force senior executive are briefed about GIPA applications identified as involving information that is Serious, Unusual, Newsworthy and/or Controversial.

If, in response to a search request by InfoLink, a command / unit identifies that the information it holds in response to the request is considered Serious, Unusual, Newsworthy and/or Controversial, it should notify InfoLink on the GIPA Instruction Sheet and submit a briefing via its own chain of command.

Certifying work completed in response to a search request

At the bottom of the GIPA Instruction Sheet is a 'Completing Officer Declaration'. The purpose of this is to hold to account the person at a command / unit who responds to a search request. The declaration requires an officer to certify that:

- (a) a record of all reasonable searches has been provided in the returned GIPA Instruction Sheet;
- (b) all records located as a result of reasonable searches have been forwarded to InfoLink;
- (c) any matters considered Serious, Unusual, Newsworthy and/or Controversial have been identified;
- (d) the time taken to deal with the request has been logged and recorded on the GIPA Instruction Sheet.

It is paramount that the person who certifies these matters can justify these if required to.

3.4. Accountability, Compliance, Oversight and Reporting

The NSW Police Force performance of functions under the GIPA Act is regulated and reported on.

Each year the NSW Police Force must report to the Information and Privacy Commission (IPC) about matters such as:

- (a) How many GIPA applications were processed;
- (b) What percentage of applications were processed outside of the statutory time frames;
- (c) The types of decisions that were made and the categories of reasons for those decisions.

The IPC is required to report to Parliament on the operation of the GIPA Act across all government agencies.

The NSWPF also reports on such matters in its Annual Report.

The IPC has statutory powers to investigate and audit government agencies in circumstances where an agency's performance is below standard.

As compliance with the GIPA Act is a key priority of the NSW Police Force, and to promote compliance with the GIPA Act across the NSWPF as a whole, InfoLink reports to the executive on a quarterly basis about the performance of commands and units in the exercise of GIPA Act functions. This reporting covers:

- (a) Number of search requests received by Commands and Units;
- (b) Percentage of requests received that are returned to InfoLink on time and those that are returned overdue.

Commands and Units will be held to account for the performance of their obligations under the GIPA Act as outlined by this document.

In addition, and importantly, under the GIPA Act there are a number of offences connected with the dealing of GIPA applications. These offences cover such things as:

- (a) Making a decision that is contrary to the requirements of the Act;
- (b) Directing a person to make a decision that is contrary to the requirements of the Act;
- (c) Influencing a person to make a decision that is contrary to the requirements of the Act;
- (d) Concealing, destroying or altering records for the purpose of preventing disclosure under the Act.

Appendix 1



GIPA Instruction Sheet

InfoLink Unit

PoliceLink Command, Communications & Security Command

Phone: [REDACTED]

Email: [REDACTED]

Information requested under the Government Information (Public Access) Act 2009 (GIPA Act), must be returned to the InfoLink Unit for assessment under the Act.

In addition, where it is reasonably expected that information released in response to this GIPAA application has the potential to significantly impact the reputation of the NSWPF, you are required to provide relevant briefings through your Chain of Command highlighting the issue/s.

Also notify the InfoLink Review Team Leader (phone number above) to raise your concerns and that the application should be considered for flagging as a Serious, Unusual, Newsworthy or Controversial issue.

The PAC/PD/Specialist Unit must allocate this task to an appropriate person to complete.

Due to Legislative time frames, a response is due within 10 days.

DOCUMENTS HELD:

Documents must be legible and not contain any redactions/blackouts. This will be done by a GIPA Information Review Officer. If you have any concerns/objections about the release of information, please provide a brief report to assist with the decision of the Information Review Officer.

DOCUMENTS NOT HELD:

If documents are not held by your Command/Unit, but you are aware that another Command/Unit may hold documents, this request should be forwarded to the new location immediately and RMS updated. Notify InfoLink via email at #GIPATRACE.

If NO Documents are located (i.e. never created, destroyed, lost) you must advise in detail what searches were undertaken to reach the decision of no documents located /held, complete the Instruction Sheet attached and email to [REDACTED]

DOCUMENTS IN ARCHIVE:

Where documents are identified as being stored in "Archive" you will need to retrieve the documents from "Archive".

Notify InfoLink, via a return email to [REDACTED] where "Archive" searches are undertaken. This will allow InfoLink to apply a 10 day extension to the due date of the Application, as outlined in the GIPA Act.

Once the "Archive" documents are retrieved, review the information, then forward the documents to InfoLink along with your completed Instruction Sheet attached.

SUPPLY OF HELD DOCUMENTS:

DO NOT SEND DOCUMENTS DIRECTLY TO THE APPLICANT OR CONTACT THE APPLICANT

Copies of all documents that fall within the scope of this request are to be provided to InfoLink through upload to RMS.

1. Create a file on the local drive titled GIPAA (insert GIPAA Number) and PAC/PD/Unit Name (i.e. GIPAA 2018/533- Parramatta.
2. Save all documents to the file.
3. Drag and drop the document/s into RMS under the allocated file number. This will create a new document. Change Document Category to "Other", Complete Container Field as above file number.

Where the format of the file will not allow direct upload into RMS, place copies of documents in the DROPZONE at P/NSWP Statewide/IAU/Dropzone

1. Create a file in the DROPZONE titled GIPAA (insert GIPAA Number) and PAC/PD/Unit Name (ie GIPAA 2018/533- Parramatta.
2. Save all documents to the file.

Send an email confirmation to [REDACTED] when the request has been complied with.

Please note this request must be complied with under the Government Information (Public Access) Act 2009. If you have any questions or difficulties in complying, please contact the InfoLink Unit on the details above.

FOR OFFICIAL USE ONLY

GIPA Instruction Sheet

Accurate responses to the following questions will assist with the GIPA review decision on the release of information. Please complete all questions.

GIPA Application Number:

1. Has this GIPA application been previously or is currently subject to a subpoena?

Yes No

If yes, provide the Schedule of Documents and confirm information produced to the court.

2. What is the current status of the investigation?

Before the Court Under Investigation Finalised Suspended

3. If suspended, is any action likely to be taken?

Yes No

If yes, provide information to assist in making a GIPA review decision re release of documents.

4. Are these documents subject to current court proceedings? If so, what stage is it at?

Mention Hearing Sentence Directions

5. Do photographs exist?

Yes No

Do not provide photographs. If they exist, the applicant will be directed to contact the PAC/Specialist Command for purchase under User Pays. See s59(1)(c) of the GIPA Act.

6. Does ICV / ERISP / CCTV / BWV or any other electronic recording exist?

Yes No

Please provide a copy. NOTE: the Information Review Officer may direct the applicant to contact the PAC/Specialist Command to make an appointment to view same. See s59(1)(b) of the GIPA Act.

7. Provide details of the electronic and paper-based systems searched to respond to this application. This information is required to complete the GIPA Notice of Decision.

Please note this request must be complied with under the Government Information (Public Access) Act 2009. If you have any questions or difficulties in complying, please contact the InfoLink Unit on the details above.

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

GIPA Instruction Sheet

All documents / items listed below MUST be addressed and marked as Held / Not Held

GIPA Application Number:

HELD		NOT HELD		HELD		NOT HELD	
Document / Item	Document is attached/enclosed. Include any objections to release in separate report.	Document does not exist / never created.	Document / Item	Document is attached/enclosed. Include any objections to release in separate report.	Document does not exist / never created.	Document / Item	Document is attached/enclosed. Include any objections to release in separate report.
COPS SEARCHES:				OTHER ELECTRONIC SEARCHES:			
Event Report	<input type="checkbox"/>	<input type="checkbox"/>	Photographs	<input type="checkbox"/>	<input type="checkbox"/>	CCTV/other external footage	<input type="checkbox"/>
Case Report	<input type="checkbox"/>	<input type="checkbox"/>	Body Worn Video	<input type="checkbox"/>	<input type="checkbox"/>	Taser footage	<input type="checkbox"/>
Facts Sheet	<input type="checkbox"/>	<input type="checkbox"/>	ERISP	<input type="checkbox"/>	<input type="checkbox"/>	In Car Video	<input type="checkbox"/>
Charge Sheet	<input type="checkbox"/>	<input type="checkbox"/>	MobiPol Footage	<input type="checkbox"/>	<input type="checkbox"/>	Emails	<input type="checkbox"/>
Custody Records	<input type="checkbox"/>	<input type="checkbox"/>	Statistical Data	<input type="checkbox"/>	<input type="checkbox"/>	CMMS	<input type="checkbox"/>
Bail Sheets	<input type="checkbox"/>	<input type="checkbox"/>					
Site Diagram	<input type="checkbox"/>	<input type="checkbox"/>					
POLICECAD SEARCHES:							
PoliceCAD Printout	<input type="checkbox"/>	<input type="checkbox"/>					
PAPER BASED SEARCHES:							
OIC/Involved Officers Notebook				<input type="checkbox"/>	<input type="checkbox"/>		
OIC/Involved Officers Duty Book				<input type="checkbox"/>	<input type="checkbox"/>		
Full Brief of Evidence				<input type="checkbox"/>	<input type="checkbox"/>		
Includes: - statements, interviews, photographs, footage, medical records, other evidentiary documents as identified.							
OTHER:							
Complaint files (Professional Standards Command)				<input type="checkbox"/>	<input type="checkbox"/>		
LEX documents (Office of the General Counsel)				<input type="checkbox"/>	<input type="checkbox"/>		

COMPLETING OFFICER DECLARATION

I confirm that ALL held documents have been forwarded to InfoLink via: RMS DROPZONE
P:\NSWP Statewide\IAL\Dropzone

I confirm that where information has been identified as Serious, Unusual, Newsworthy or Controversial, a briefing has been submitted via Chain of Command Yes Not Applicable

I confirm that details of all applicable system / record searches have been recorded at question 7, on page 2 of this Instruction Sheet Yes

Time Taken to complete this request: (hours/minutes)

NAME: SIGNATURE:

PAC/PD/Unit: DATE:

Save As

Please note this request must be compiled with under the Government Information (Public Access) Act 2009. If you have any questions or difficulties in complying, please contact the InfoLink Unit on the details above.

Appendix 2

1 Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice collective Ministerial responsibility,
- (b) prejudice Ministerial responsibility to Parliament,
- (c) prejudice relations with, or the obtaining of confidential information from, another government,
- (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,
- (e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,
- (f) prejudice the effective exercise by an agency of the agency's functions,
- (g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,
- (h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

2 Law enforcement and security

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
- (b) prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,
- (c) increase the likelihood of, or prejudice the prevention of, preparedness against, response to, or recovery from, a public emergency (including any natural disaster, major accident, civil disturbance or act of terrorism),
- (d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,
- (e) endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle,
- (f) facilitate the commission of a criminal act (including a terrorist act within the meaning of the *Terrorism (Police Powers) Act 2002*),
- (g) prejudice the supervision of, or facilitate the escape of, any person in lawful custody,
- (h) prejudice the security, discipline or good order of any correctional facility.

3 Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) reveal an individual's personal information,
- (b) contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*,
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings,
- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness,
- (e) reveal false or unsubstantiated allegations about a person that are defamatory,
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation,
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.

4 Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,
- (b) reveal commercial-in-confidence provisions of a government contract,
- (c) diminish the competitive commercial value of any information to any person,
- (d) prejudice any person's legitimate business, commercial, professional or financial interests,
- (e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

5 Environment, culture, economy and general matters

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) endanger, or prejudice any system or procedure for protecting, the environment,
- (b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge,
- (c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species,
- (d) damage, or prejudice the ability of the Government or an agency to manage, the economy,
- (e) expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

6 Secrecy provisions

- (1) There is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of this 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.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the prohibition against disclosure.

7 Exempt documents under interstate Freedom of Information legislation

- (1) There is a public interest consideration against disclosure of information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State if notice has been received from that Government that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the exemption.
- (3) In this clause, a reference to a corresponding law is a reference to:
 - (a) the *Freedom of Information Act 1982* of the Commonwealth, or
 - (b) a law of any other State that is prescribed by the regulations as a corresponding law for the purposes of this clause.

Appendix 3

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

1 Overriding secrecy laws

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information the disclosure of which is prohibited by any of the following laws (which are referred to in this 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:

[Assisted Reproductive Technology Act 2007](#)—Part 3 (Central register)

[Bail Act 2013](#)—section 89 (Restrictions on publication of association conditions)

[Biofuels Act 2007](#)—section 25 (Secrecy)

[Child Protection \(Offenders Registration\) Act 2000](#)—section 21E (Prohibited disclosure of information concerning registrable persons)

[Crimes \(Administration of Sentences\) Act 1999](#)—section 194 (Security of certain information) and regulations under section 256 (Victims Register)

[Crimes \(Forensic Procedures\) Act 2000](#)—section 109 (Disclosure of information)

[Crimes \(Sentencing Procedure\) Act 1999](#)—sections 51B (Certain information not to be published or broadcast) and 100H (Certain information not to be published or broadcast)

[Criminal Procedure Act 1986](#)—regulations under section 351 (Regulations with respect to the provision or disclosure of information in connection with intervention programs)

[Criminal Records Act 1991](#)—section 13 (Unlawful disclosure of information concerning spent convictions)

[Dust Diseases Tribunal Act 1989](#)—section 32I (Information about claims)

[Education Act 1990](#)—provision made by or under section 18A (Publication of school results) or Division 2 (Obtaining information about students) of Part 5A

[Electoral Act 2017](#)—sections 43 (Electoral Information Register not available for public inspection), 55 (Privacy—non-disclosure of information), 159 (Secrecy relating to technology assisted voting), 175 (Security of election materials and electronic resources) and 268 (Disclosure of information)

[Gaming and Liquor Administration Act 2007](#)—section 17 (Secrecy)

[Health Administration Act 1982](#)—Divisions 6B (Quality assurance committees) and 6C (Root cause analysis teams) of Part 2, and section 23 (Specially privileged information)

[Health Care Complaints Act 1993](#)

[Independent Commission Against Corruption Act 1988](#)

[Jury Act 1977](#)

[Law Enforcement Conduct Commission Act 2016](#)

[Parliamentary Budget Officer Act 2010](#)—section 17 (Confidentiality of information or documents relating to election policy costings)

[Police Act 1990](#)—section 169A (Identity of complainant not to be disclosed)

[Police Regulation 2015](#)—clause 54 (Secrecy as to complaints about conduct)

[Public Interest Disclosures Act 1994](#)—section 22 (Confidentiality guideline)

[Public Lotteries Act 1996](#)—section 80 (Secrecy)

[State Records Act 1998](#)—section 73 (Authority's duty of confidentiality) but only in respect of information to which a person gains access in the exercise of functions under that Act as a result of the information having been acquired in the course of the administration of another Act mentioned in this Schedule

[Totalizator Act 1997](#)—section 105 (Secrecy)

[Witness Protection Act 1995](#)

(2) Subclause (1) does not apply in relation to the disclosure of a spent conviction (within the meaning of the [Criminal Records Act 1991](#)) to the person who was convicted.

2 Cabinet information

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in this Act as Cabinet information) contained in any of the following documents:

(a) a document that contains an official record of Cabinet,

(b) a document prepared for the dominant purpose of its being submitted to Cabinet for Cabinet's consideration (whether or not the document is actually submitted to Cabinet),

(c) a document prepared for the purpose of its being submitted to Cabinet for Cabinet's approval for the document to be used for the dominant purpose for which it was prepared (whether or not the document is actually submitted to Cabinet and whether or not the approval is actually given),

(d) a document prepared after Cabinet's deliberation or decision on a matter that would reveal or tend to reveal information concerning any of those deliberations or decisions,

(e) a document prepared before or after Cabinet's deliberation or decision on a matter that reveals or tends to reveal the position that a particular Minister has taken, is taking, will take, is considering taking, or has been recommended to take, on the matter in Cabinet,

(f) a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in paragraphs (a)–(e).

(2) Information contained in a document is not Cabinet information if:

(a) public disclosure of the document has been approved by the Premier or Cabinet, or

(b) 10 years have passed since the end of the calendar year in which the document came into existence.

(3) Information is not Cabinet information merely because it is contained in a document attached to a document referred to in subclause (1).

(4) Information is not Cabinet information to the extent that it consists solely of factual material unless the information is contained in a document that, either entirely or in part, would:

(a) reveal or tend to reveal information concerning any Cabinet decision or determination, or

(b) reveal or tend to reveal the position that a particular Minister has taken, is taking or will take on a matter in Cabinet.

(5) In this clause, Cabinet includes a committee of Cabinet and a subcommittee of a committee of Cabinet.

3 Executive Council information

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in this Act as Executive Council information) contained in any of the following documents:

(a) a document that contains an official record of the Executive Council,

(b) a document prepared for the purpose of being submitted to the Executive Council (whether or not that is the only or the dominant purpose for which it was prepared and whether or not the document is actually submitted to the Executive Council),

(c) a document prepared after the Executive Council's deliberation or advice on a matter that would reveal or tend to reveal information concerning that deliberation or advice,

(d) a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in paragraphs (a)–(c).

(2) Information contained in a document is not Executive Council information if:

(a) public disclosure of the document has been approved by the Governor or the Premier, or

(b) 10 years have passed since the end of the calendar year in which the document came into existence.

(3) Information is not Executive Council information merely because it is contained in a document attached to a document referred to in subclause (1).

(4) Information is not Executive Council information to the extent that it consists solely of factual material unless the information would reveal or tend to reveal information concerning any deliberation or advice of the Executive Council.

4 Contempt

It is to be conclusively presumed that there is an overriding public interest against disclosure of information the public disclosure of which would, but for any immunity of the Crown:

(a) constitute contempt of court, or

(b) contravene any order or direction of a person or body having power to receive evidence on oath, or

(c) infringe the privilege of Parliament.

5 Legal professional privilege

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege), unless the person in whose favour the privilege exists has waived the privilege.

(2) If an access application is made to an agency in whose favour legal professional privilege exists in all or some of the government information to which access is sought, the agency is required to consider whether it would be appropriate for the agency to waive that privilege before the agency refuses to provide access to government information on the basis of this clause.

(3) A decision that an agency makes under subclause (2) is not a reviewable decision under Part 5.

5A Privilege generally

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in a document that, in response to a court order, subpoena or otherwise:

(a) was a document a person objected to producing in any court proceedings on the grounds that the document was a privileged document, and

(b) was not compelled by a court to be given or produced on the grounds of privilege.

6 Excluded information

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that is excluded information of an agency, other than information that the agency has consented to the disclosure of.

(2) Before an agency decides an access application by refusing to provide access to information on the basis that it is excluded information of another agency, the agency is required to ask the other agency whether the other agency consents to disclosure of the information.

(3) A decision that an agency makes to consent or to refuse to consent to the disclosure of excluded information of the agency is not a reviewable decision under Part 5.

7 Documents affecting law enforcement and public safety

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any of the following documents:

- (a) a document created by the former Information and Intelligence Centre of the Police Service or the former State Intelligence Group,
- (b) a document created by the State Intelligence Command or the Counter Terrorism and Special Tactics Command of the NSW Police Force, the former Counter Terrorist Co-ordination Command of the NSW Police Force, the former Protective Security Group of the Police Service, the former Special Branch of the Police Service or the former Bureau of Criminal Intelligence,
- (c) a document created by the State Crime Command of the NSW Police Force in the exercise of its functions concerning the collection, analysis or dissemination of intelligence,
- (d) a document created by the Corrections Intelligence Group of Corrective Services NSW, Department of Justice, in the exercise of its functions concerning the collection, analysis or dissemination of intelligence,
- (e) a document created by the Security and Intelligence Unit of Juvenile Justice, Department of Justice, in the exercise of its functions concerning the collection, analysis or dissemination of intelligence,
- (f) a document concerning law enforcement and public safety created by another entity established under a law of another jurisdiction, including a jurisdiction outside Australia, whose functions substantially correspond with an entity referred to in paragraphs (a)–(e), including any entity declared by the regulations to be a corresponding entity for the purposes of this clause.

8 Transport safety

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would disclose matter relating to an investigation or inquiry into a transport accident or incident under section 46BA or 46BC of the [Passenger Transport Act 1990](#).

(2) (Repealed)

(3) Despite subclause (1), information about a matter referred to in that subclause ceases to be covered by this clause when the report into the investigation or inquiry is tabled before both Houses of Parliament.

9 Adoption

It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would disclose:

- (a) matter relating to adoption procedures under the [Adoption Act 2000](#), or
- (b) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the [Adoption Act 2000](#).

10 Care and protection of children

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in a report to which section 29 of the [Children and Young Persons \(Care and Protection\) Act 1998](#) applies.

11 Ministerial Code of Conduct

It is to be conclusively presumed that there is an overriding public interest against disclosure of information the disclosure of which would disclose information contained in the Register of Interests kept by or on behalf of the Premier pursuant to the Code of Conduct for Ministers of the Crown adopted by Cabinet.

12 Aboriginal and environmental heritage

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in a document that is the subject of a declaration referred to in section 161 of the [National Parks and Wildlife Act 1974](#).

(2) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that has been provided to the Scientific Committee under the [Biodiversity Conservation Act 2016](#) if the Minister has, under section 4.20 of that Act, authorised the Scientific Committee to restrict access to the information.

(3) It is to be conclusively presumed that there is an overriding public interest against disclosure of information in a public register required to be kept under the [Biodiversity Conservation Act 2016](#) if the Environment Agency Head (within the meaning of that Act) has, under section 9.10 of that Act, restricted access to the information.

(4) It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in a plan of management or draft plan of management for an area of community land under Division 2 of Part 2 of Chapter 6 of the [Local Government Act 1993](#) that is the subject of a resolution of confidentiality referred to in section 36DA (2) of that Act (which relates to the disclosure of the nature and location of a place or an item of Aboriginal significance).

13 Information about complaints to Judicial Commission

It is to be conclusively presumed that there is an overriding public interest against disclosure of information provided by the Judicial Commission to the Minister administering the [Judicial Officers Act 1986](#) under section 37A of that Act.

14 Information about authorised transactions under [Electricity Network Assets \(Authorised Transactions\) Act 2015](#)

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any document prepared for the purposes of or in connection with an authorised transaction under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#) other than a document the public disclosure of which has been approved by the Treasurer.

15 Information about authorised transaction under [Land and Property Information NSW \(Authorised Transaction\) Act 2016](#)

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any document prepared for the purposes of or in connection with the authorised transaction under the [Land and Property Information NSW \(Authorised Transaction\) Act 2016](#) other than a document the public disclosure of which has been approved by the Treasurer.

16 Information provided to High Risk Offenders Assessment Committee

It is to be conclusively presumed that there is an overriding public interest against disclosure of information contained in any document prepared for the purposes of the High Risk Offenders Assessment Committee established by the [Crimes \(High Risk Offenders\) Act 2006](#) or any of its subcommittees.

Schedule 2 Excluded information of particular agencies

Note.

Information that relates to a function specified in this Schedule in relation to an agency specified in this Schedule is **excluded information** of the agency. Under Schedule 1 it is to be conclusively presumed that there is an overriding public interest against disclosure of excluded information of an agency (unless the agency consents to disclosure). Section 43 prevents an access application from being made to an agency for excluded information of the agency.

1 Judicial and prosecutorial information

A court—judicial functions.

The office of Director of Public Prosecutions—prosecuting functions.

2 Complaints handling and investigative information

The office of Auditor-General—investigative, audit and reporting functions.

The Independent Commission Against Corruption—corruption prevention, complaint handling, investigative and reporting functions.

The office of Inspector of the Independent Commission Against Corruption—operational auditing, complaint handling, investigative and reporting functions.

The Judicial Commission of New South Wales (including the Conduct Division)—complaint handling, investigative and reporting functions.

The office of Ombudsman—complaint handling, investigative and reporting functions (including any functions of the Ombudsman under the [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#)).

The office of Information Commissioner—review, complaint handling, investigative and reporting functions.

The office of Legal Services Commissioner—complaint handling, investigative, review and reporting functions.

The Health Care Complaints Commission—complaint handling, investigative, complaints resolution and reporting functions (including any functions exercised by the Health Conciliation Registry and any function concerning the provision of information to a registration authority or a professional council (within the meaning of the [Health Care Complaints Act 1993](#)) relating to a particular complaint).

The Child Death Review Team—all functions.

The Law Enforcement Conduct Commission—corruption prevention, handling of misconduct matters (within the meaning of the [Law Enforcement Conduct Commission Act 2016](#)), investigative and reporting functions.

The office of Inspector of the Law Enforcement Conduct Commission—operational auditing, handling of misconduct matters (within the meaning of the [Law Enforcement Conduct Commission Act 2016](#)), investigative and reporting functions.

The office of Privacy Commissioner—review, complaint handling, investigative and reporting functions.

The New South Wales Crime Commission—investigative and reporting functions.

The President of the Anti-Discrimination Board—complaint handling, investigative and reporting functions in relation to a complaint that is in the course of being dealt with by the President.

The Office of Local Government (including the Chief Executive and other Departmental representatives)—complaint handling and investigative functions conferred by or under any Act on that Department.

The Domestic Violence Death Review Team—all functions.

The office of the Inspector of Custodial Services—operational auditing, review, inspection, investigative and reporting functions.

The office of Small Business Commissioner—complaint handling, dispute resolution, investigative and reporting functions.

The office of the Public Service Commissioner—inquiry functions of the Commissioner under section 83 of the *Government Sector Employment Act 2013* (or under section 82 of that Act if the Commissioner is directed to conduct a special inquiry).

The office of Ageing and Disability Commissioner—report handling, investigative and reporting functions (including any functions of the Commissioner relating to Official Community Visitors appointed under the *Ageing and Disability Commissioner Act 2019*).

3 Competitive and market sensitive information

The Treasury Corporation—borrowing, investment and liability and asset management functions.

The SAS Trustee Corporation—investment functions.

Any body or office that exercises functions under the *National Electricity (NSW) Law* (including functions under the *National Electricity Code* referred to in that Law) on behalf of National Electricity Market Management Company Limited (ACN 072 010 327) (NEMMCO) or any successor to NEMMCO—those functions.

The Corporation constituted under the *Superannuation Administration Authority Corporatisation Act 1999*—functions exercised in the provision of superannuation scheme administration services, and related services, in respect of any superannuation scheme that is not a State public sector superannuation scheme.

The Workers Compensation Nominal Insurer established under the *Workers Compensation Act 1987*—functions relating to the issuing of policies of insurance to employers and the calculation of premiums (but only in relation to individual employers), the management of specific claims and to asset and funds management and investment.

4 Other information

The NSW Trustee and Guardian—functions exercised in the NSW Trustee and Guardian's capacity as executor, administrator or trustee.

The Department of Education—functions relating to the storing of, reporting on or analysis of information with respect to the ranking or assessment of students who have completed the Higher School Certificate for entrance into tertiary institutions.

Universities—functions relating to dealing with information with respect to the ranking or assessment of students who have completed the Higher School Certificate for entrance into tertiary institutions.

The New South Wales Electoral Commission—complaint handling, audit, reporting, investigative and prosecuting functions.

The Commissioner of Victims Rights—functions relating to dealing with confidential information concerning victims contained in applications for victims support under the *Victims Rights and Support Act 2013* and functions relating to dealing with confidential information concerning victims contained in the Victims Register established under the *Mental Health (Forensic Provisions) Act 1990*.

An agency exercising functions in relation to the provision of information to the Australian Security Intelligence Organisation—functions relating to the handling of requests for information from, or the provision of information to, the Australian Security Intelligence Organisation.