



Attorney General  
& Justice

## Release of information under the GIPA Act

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# Release of information under the GIPA Act

This is a procedure for dealing with requests for information within the **Legal Services Branch** which meets the minimum standards established in the section titled 'Proactive release of information' and 'Informal release of information' in the Departmental *Publication guide*.

## Essential Summary

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- This procedure outlines how the **Legal Services Branch** releases published information as proactive release and how it responds to informal requests for information from members of the public.
- Information sought by applicants which is excluded information under the GIPA Act or relates to personal affairs information of another person or concerns a person's business, commercial, professional or financial interests requires a formal application under the GIPA Act. Such requests are not covered by this procedure.

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# 1 Scope

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This procedure outlines the steps to be taken when responding to a request for information made directly by a member of the public. It also outlines the circumstances where newly published information may be released on the **Legal Services Branch** website and recorded as proactive release information.

This procedure must be read in conjunction with the Departmental standards in the 'Publication Guide' available on Infolink.

The **Legal Services Branch** complies with the statutory requirements of the GIPA Act and the requirements outlined in the Publication Guide.

Applications for **court documents** are to be made to the court where the matter was heard. Under the *Court Information Act 2010*, court documents are classed as 'open access information' and 'restricted access information'. Generally, any person is entitled to access 'open access information' unless otherwise ordered by the court.

# 2 Purpose

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The purpose of this procedure is to:

- Provide guidance for staff within the **Legal Services Branch** when responding to requests for information.
- Respond to requests for information in accordance with statutory requirements and in line with AGD policy.
- Ensure/maintain consistency of approach across all Business Centres in the release of government information as proactive release information.

# 3 Definitions

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Brief definitions of key terms used in the document which are essential to the reader's understanding follow:

**Applicant** means a client or member of the public making a request for information

**Publication Guide** is a document that each Government Agency is required to publish under the GIPA Act which describes an Agency's structure and functions and identifies the kinds of government information held by the Agency and how it may be accessed.

**Open access information** means an Agency's current publication guide, information contained in tabled documents, policy document, disclosure log, register of government contracts, records of open access information not publicly available and other government information as prescribed by the regulations.

**Authorised proactive release** means the release of information proactively by a Government Agency unless there is an overriding public interest against disclosure.

**Informal release** means the release of information in response to an informal request by an applicant unless there is an overriding public interest against disclosure of the information.

## 4 Authority to release information

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The Director General has delegated the function of making decisions in relation to the release of information to the Director of the **Legal Services Branch**. Decisions regarding open access information, authorised proactive release of information, and informal release of information may be made with the authority of the Director.

The requirements for posting **open access information** are outlined in the *Publication Guide*, however the Director has the authority to decide what constitutes 'open access information' under section 18 of the GIPA Act. For example:

What are the **Legal Services Branch** policy documents for the purposes of the GIPA Act 2009?

What policy(s) cannot be publicly available on the basis of an overriding public interest against disclosure (a record of these policies is kept on the DAGJ website)?

Posting other government information as prescribed by the *Government Information (Public Access) Regulation 2009*.

The **Legal Services Branch** is guided by the *Publication Guide* in relation to the **proactive release of information**. Under section 7 of the GIPA Act, the Director is authorised to release any government information held by the **Legal Services Branch** which is publicly available unless there is an overriding public interest against disclosure. Guidance is provided in these procedures to assist in determining whether there is an overriding public interest against disclosure in relation to information held.

The **Legal Services Branch** is also authorised to release information in response to **informal requests for information** as provided for in section 8 of the GIPA Act. If the information requested by an applicant is held by the **Legal Services Branch** and is not already publicly available (as open access information or having been released as proactive release information), this information may be released in accordance with these procedures.

## 5 Proactive release of information

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### 5.1 Procedures for proactive release

To ensure that the approach towards the proactive release of information is generally consistent across the AGD, this procedure has been drafted to assist the **Legal Services Branch** in determining information that may be released in this way and will assist the **Legal Services Branch** to maintain statistics to report on the release of information in this way.

### 5.2 Information released as proactive

When staff of the **Legal Services Branch** draft new information (examples listed below), consideration must be given to whether this information may be released as proactive information and made publicly available on the **Legal Services Branch** website.

Such information may include:

- Guidelines
- Internal procedures
- Brochures
- Bulletins
- Fact sheets
- Task Force Reports
- and any other information which may be of interest to the public.

Staff of the **Legal Services Branch** are required to consider whether the document drafted may be released in this way and make a recommendation to the Director regarding the proactive release of this information, if appropriate.

### 5.3 Considerations for proactive release

The considerations that staff may taken into account when determining whether information may be recommended for release include (but are not limited to) the following:

- Whether the information relates to the function of the **Legal Services Branch**?
- Will release of the information allow members of the public to better understand how the **Legal Services Branch** operates?

- Does the information explain how the obligations of the **Legal Services Branch** are met?
- Does the information explain how decisions are made by the **Legal Services Branch** that affect the public?
- Will the release of information reveal work or projects undertaken by the **Legal Services Branch** that affects the public?
- Will the release of information inform the public about community consultation that has taken place?

#### 5.4 Information which may not be released as proactive release

Before recommending information to be released as proactive release information, staff in the **Legal Services Branch** should check that the information that is newly published does not include information that is:

- Excluded information under the GIPA Act (see section 8 of this procedure for a list of excluded information which may not be released)
- Information for which there is an overriding public interest against disclosure (see section 9 of this procedure for the public interest test)

#### 5.5 Recommending proactive release

Once it has been established that published information does not fall into the category of excluded information (see section 8 of this procedure) and the information satisfies the public interest test (see section 9 of this procedure), then the information may be recommended for release.

As part of the approval process, staff should include a paragraph in their submission to the Director **Legal Services Branch** recommending the proactive release of the published information.

An example has been provided below:

Having considered the content and purpose of [Insert name of document], it is recommended that this information be released as proactive release information. I advise that this information does not fall into the category of excluded information under the GIPA Act, and on balance the public interest considerations for the release of this information outweigh the public interest considerations against disclosure. The [insert name of document] demonstrates the decision-making process of the **Legal Services Branch** and will ensure transparency and provide the public with a better understanding of the operation of the **Legal Services Branch**.

<b>Name of officer</b>	<b>Director</b>
<b>Legal Services Branch</b>	<b>Legal Services Branch</b>

The Director of the **Legal Services Branch** has the delegation to release information as proactive release. A decision to release in this way is made in good faith and is covered by statutory protections against liability.

If the Director of the **Legal Services Branch** decides to release the information as proactive release, it is recorded in a register kept within the **Legal Services Branch** with a copy of the published information made available on the **Legal Services Branch** website. The register of proactive release is then provided to the GIPA & Privacy Officer on an annual basis to satisfy AGD reporting requirements under the GIPA Act.

## 6 Informal release of information

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### 6.1 Protections under the GIPA Act 2009

Staff with the delegation to make decisions relating to the release of information are protected under the GIPA Act. If government information is released under the GIPA Act and the decision to release is made in good faith, then no action for defamation or breach of confidence may be brought in relation to this decision (section 113(a)) and no action for defamation or breach of confidence in respect of any publication involved in or resulting from the disclosure of information may be brought against the author of a record containing the information (section 113(b)).

### 6.2 Procedures for handling informal requests

To ensure that the approach towards the informal release of information is generally consistent across the AGD, this procedure has been drafted as a guide to assist the **Legal Services Branch** in determining whether there is an overriding public interest against disclosure of information that may be sought and provides guidance on the application of the public interest test as provided for in section 13 of the GIPA Act.

Individual Business Centres are in the best position to determine:

- the type of information they hold
- information that is often requested
- information that may be released to applicants

### 6.3 Questions to ask when informal requests are made

Information held by the **Legal Services Branch** may be requested by applicants from time to time. This may include a request over the telephone, an email requesting information or in the form of a letter to the **Legal Services Branch**. An informal request may also be forwarded from the GIPA & Privacy Officer to be dealt with by the **Legal Services Branch**.

The **Legal Services Branch** is not required to disclose government information following an informal request and cannot be required to consider an informal request for government information as provided for in section 8(3).

It may be the case that staff of the **Legal Services Branch** consider it more appropriate for an applicant to apply for the information by lodging a formal application under the GIPA Act. A formal application should only be made where the Business Centre cannot assist with the provision of the information.

Circumstances where an applicant may be required to lodge a formal request include where information relates to:

- Personal information of a third party; or
- Business, commercial, professional or financial information of a third party or organisation; or
- Where the request for information is voluminous and will require a significant amount of time to process.

**When receiving requests for information the following questions need to be asked:**

1. Is the information held by the **Legal Services Branch**? If yes, proceed to next question.
2. Is the information available on the **Legal Services Branch** website? If available, direct the applicant to the website or offer to post a copy of the information to the applicant.
3. Is the information held on a **Legal Services Branch** file or held electronically and not publicly available? If yes, then a written request for this information is required and a file (either electronic or paper) must be created to record the request.
4. Is the information difficult to obtain or will it take a considerable amount of time to copy and collate? If yes, it may be more appropriate to request that the applicant make a formal application under the GIPA Act and lodge it with the GIPA & Privacy Officer.

#### 6.4 Information that may be released relating to an applicant

The following information may be released to applicants as informal release:

- Correspondence (including emails) from the **Legal Services Branch** or the AGD to the applicant
- Correspondence (including emails) from the applicant to the **Legal Services Branch** or the AGD
- Information previously requested by the applicant and supplied to the applicant
- Minutes of a meeting held between the applicant and staff of the **Legal Services Branch**
- File notes of telephone conversations between the applicant and staff of the **Legal Services Branch**

#### 6.5 Information that may be released relating to the operation of the Legal Services Branch.

Other information held by the **Legal Services Branch** may also be released informally. This information could include:

- Total annual budget of the **Legal Services Branch**
- Legal Services Branch** risk management strategies
- Business plan for the **Legal Services Branch**
- Minutes of meetings of **the Legal Services Branch** with information deleted if necessary
- Training completed by **Legal Services Branch**
- Statistics kept by the **Legal Services Branch**
- Results of surveys undertaken by the **Legal Services Branch**

## 7 Other information

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If information is requested that does not fall into either of the two categories above, staff of the **Legal Services Branch** need to consider whether the information requested is:

- excluded information under the GIPA Act (see section 8 of this procedure) **OR**
- whether there is an overriding public interest against the disclosure of the information (OPIAD) after having conducted the public interest test (see section 9 of this procedure)

## 8 Excluded information

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The following information, if held by the **Legal Services Branch** is classed as excluded information for which there is a conclusive presumption of an overriding public interest against disclosure (Schedule 1 GIPA Act) and the information cannot be released:

**Information which is prohibited from disclosure** under the following Acts (see Schedule 1 for a complete list of Acts):

*Bail Act 1978* – section 36C (certain information not to be published or broadcast)

*Crimes (Administration of Sentences) Act 1999* – regulations under section 256 (Victims Register)

*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)

*Jury Act 1977*

*Protected Disclosure Act 1994* – section 22 (Confidentiality guideline)

*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

*Witness Protection Act 1995*

**Cabinet information.** This means:

- (a) a document that contains an official record of Cabinet
- (b) a document prepared for the purpose of being submitted to Cabinet for consideration (whether or not actually submitted to Cabinet)
- (c) a document prepared for the purpose of being submitted to Cabinet for approval by Cabinet to be used for the purpose for which it was prepared (whether or not the document is actually submitted to cabinet and whether or not approval is given)
- (d) a document prepared after Cabinet's deliberation or decision on a matter that would reveal or tend to reveal information concerning deliberations or decisions
- (e) a document prepared before or after Cabinet's deliberation or decision on a matter that reveals or tends to reveal a the position a Minister is taking, has taken, will take, is considering taking or has been recommended to take on the matter in Cabinet
- (f) a preliminary draft of, or a copy of or part of and an extract from a document in (a) – (e) (Schedule 1 clause 1 GIPA Act).

**Executive Council information** contained in 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
- (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 extract from a document in (a) – (c)

See Schedule 1(3)(2) for information which is not Executive Council information

**Contempt** means information 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 (Schedule 1 clause 4 GIPA Act).

**Legal professional privilege** means information that would be privileged from production in legal proceedings on the ground of client legal privilege, unless the person in whose favour the privilege exists has waived the privilege. If information falls into this category, then the Agency required to consider whether it is appropriate for the Agency to waive that privilege before refusing access (Schedule 1 clause 5 GIPA Act)

**Excluded information.** This includes:

➤ Judicial and prosecutorial information – judicial functions. This means functions of the court that relate to the hearing or determination of proceedings before it and includes:

(a) in relation to a Magistrate – such functions of the Magistrate as relate to the conduct of committal proceedings, and

(b) in relation to a Coroner – such functions of the Coroner as relate to the conduct of inquests and inquiries under the *Coroners Act 1980*.

➤ The Office of the Information Commissioner – review, complaint handling, investigative and reporting functions.

➤ The Office of the Legal Services Commissioner – complaint handling, investigative, review and reporting functions.

➤ The Office of the Privacy Commissioner – complaint handling, 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.

- Information affecting **law enforcement and public safety** (refer the Schedule 1 clause 7)
- Information relating to **transport safety** (Schedule 1 clause 8)
- Information regarding **adoption** (Schedule 1 clause 9)
- Care and protection of children** (Schedule 1 clause 10)
- Ministerial Code of Conduct** (Schedule 1 clause 11)
- Aboriginal and environmental heritage** (Schedule 1 clause 12)

## 9 Public Interest Test

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If the information does not fall within any of the twelve (12) categories listed in section 8, the public interest test should be applied to the information. The public interest test as provided for in section 13 of the GIPA Act 2009 provides that there is an overriding public interest against disclosure of information if, and only if, there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

### 9.1 Public interest considerations in favour of disclosure

**There is a general public interest in favour of the disclosure of information held by the Legal Services Branch.**

There are no limits to the considerations that may be taken into account in favour of the disclosure of information, however some examples are provided at section 12(2) of the GIPA Act and include:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public
- Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds

- The information is personal information of the person to whom it is to be disclosed
- Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct

## 9.2 Public interest considerations against disclosure

The following effects public interest considerations are the **only** public interest considerations that may be taken into account as public interest considerations **against** disclosure for the purpose of determining whether there is an overriding public interest against disclosure:

### 1 Responsible and effective government

- prejudice collective Ministerial responsibility
- prejudice Ministerial responsibility to Parliament
- prejudice relations with, or the obtaining of confidential information from another government
- prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions
- 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
- prejudice the effective exercise by an agency of the agency's functions
- found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence
- 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

- Reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant
- Prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law
- 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)
- Endanger or prejudice any system or procedure for protecting the life, health or safety of any person
- Endanger the security of, or prejudice any system or procedure for protecting any place, property or vehicle
- Facilitate the commission of a criminal act
- Prejudice the supervision of or facilitate the escape of any person in lawful custody
- Prejudice the security, discipline or good order of any correctional facility.

## 3 Individual rights, judicial processes and natural justice

- reveal an individual's personal information
- 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*
- prejudice any court proceedings by revealing matter prepared for the purpose of or in relation to current or future proceedings
- prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness
- reveal false or unsubstantiated allegations about a person that are defamatory

expose a person to a risk of harm or of serious harassment or serious intimidation

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**

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

reveal commercial-in-confidence provisions of a government contract

diminish the competitive commercial value of any information to any person

prejudice any person's legitimate business, commercial, professional or financial interest

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**

endanger or prejudice any system or procedure for protecting the environment

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

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

Damage or prejudice the ability of the Government or an agency to manage the economy

- 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

- Constitute a contravention of a provision of any other Act or statutory rule (of this or another State or Territory of the Commonwealth) that prohibits the disclosure of information whether or not the prohibition is subject to specified qualifications or exceptions. Consideration may also be given to the policy that underlies the prohibition against disclosure.

## 7 Exempt documents under interstate Freedom of Information legislation

- If notice has been received from the Government of the Commonwealth or of another State or Territory that the information in question is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State or Territory. Consideration may also be given to the policy that underlies this exemption. Corresponding law refers to the Freedom of Information Act 1982 or a law of any other State or Territory prescribed.

### 9.3 Conducting the public interest test.

To determine whether information may be released, the public interest considerations in favour of disclosure (listed above at 9.1 and any other considerations) are weighed up against the public interest considerations against disclosure (only those considerations listed at 9.2).

There is an overriding public interest against disclosure of information held by the **Legal Services Branch** ONLY if there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

## 10 Conditions imposed for informal release

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When staff within the **Legal Services Branch** release information informally, section 8(2) of the GIPA Act allows for certain reasonable conditions to be imposed on the information released. Such conditions could include:

- A photocopying charge (standard rate is 45 cents per page)
- An undertaking that the information will only be used by the applicant for a particular purpose
- Informal release by arranging a viewing of the information at the premises of the **Legal Services Branch** with a staff member present.

Information released informally may also be released:

- in any way the **Legal Services Branch** determines. For example, electronically or hard copy (section 8(4));
- with matter deleted from a record if inclusion of the deleted matter would otherwise result in there being an overriding public interest against disclosure of the record (section 8(5)).

## 11 Roles and responsibilities

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### 11.1 Director General

The Director General is responsible for:

- authorising release of information under the GIPA Act
- conducting reviews of decisions made under the GIPA Act
- approving the Publication Guide

### 11.2 Director, Legal Services Branch

The Director, Legal Services Branch is responsible for ensuring:

- open access information relating to the **Legal Services Branch** is current and available on the 'Access to Information' page for the AGD
- information is proactively released and statistics kept regarding the release

- procedures are adopted by the **Legal Services Branch** regarding the informal release and proactive release of information.
- government information requested following a formal application is provided to the GIPA & Privacy Officer within three (3) days of being notified of the request for advice/information.
- making Determinations under the GIPA Act in response to formal applications received by the Agency.

### **11.3 GIPA & Privacy Officer**

The GIPA & Privacy Officer is responsible for:

- responding to formal requests under the GIPA Act 2009
- maintaining the publication guide and disclosure log under the GIPA Act 2009
- maintaining the list of open access documents that are not publicly available as a result of an overriding public interest against disclosure
- reviewing the proactive release of information by business centres and reporting on proactive release by AGD each reporting year.
- drafting policies and procedures regarding the AGD compliance with the GIPA Act 2009.

## **12 References**

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*Government Information (Public Access) Act 2009*

## 13 Document information

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## 14 Document history

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<b>Version</b>	<b>Date</b>	<b>Reason for Amendment</b>