

Informal release - Guidelines for staff

Wherever possible the department tries to offer **informal release** in providing public access to our information.

These guidelines may assist departmental officers to decide whether **informal access** is the best option when handling a request for access to information held by their business unit. These are general guidelines and may be interpreted flexibly. If you consider that the guidelines need to be modified to suit a particular request, please talk to the [Information Access unit](#).

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1. Release of government information held by the department

The Government Information (Public Access) Act 2009 (GIPA Act) provides for **informal release** of information held by government agencies including records held by the Department of Education.

Under the GIPA Act, the department releases information in four ways:

- i. Open-access - 'mandatory' and 'proactive' release – by publishing the information on the website or by other means making it available free or for a reasonable charge. Examples are our Annual Report, published statistics, policy documents etc. This category also includes some information about contracts the department has entered.
- ii. Routinely, as part of a business unit's day-to-day business, for example brochures, student classroom reports, copy of academic record etc.
- iii. Informal release in response to a request
- iv. Formal release in response to an access application under the GIPA Act.

2. Background

The department adopts principles and practices of openness and accountability towards its clients, staff, and members of the public about its operations and record-keeping.

Releasing information promptly and at the lowest reasonable cost is fundamental to the GIPA Act. Access should only be restricted when there is an overriding public interest against disclosure

(OPIAD – see item 15).

Wherever possible departmental staff should deal with access requests informally. Formal access applications are only needed where the information is not publicly available, or not routinely available through a business unit's usual processes or where informal access would not be appropriate.

All information in records the department holds centrally and in schools and corporate areas, whether we create them or receive them from elsewhere, belongs to the department and is subject to the access provisions of the GIPA Act.

Staff should deal with routine requests for information at the business unit, school or by officers routinely responsible for the relevant records, in the usual way under the department's existing administrative access arrangements.

3. When is informal release appropriate?

Under informal release the department can apply any reasonable conditions. Informal release gives you the opportunity to consider whether a request can be dealt with in the particular circumstances of your school or business centre. It enables you to negotiate directly with the applicant about the request and retain the legal protections of the formal release process.

If a person requests information that is not publicly available or not routinely provided by the business unit as part of its regular work, informal release may be a suitable option.

Whenever a request for information is received, you should consider if the information requested can be released informally.

You should make your decision and let the applicant know promptly, ideally within 10 to 20 working days of receiving the request for information. There is scope to negotiate this time frame with the applicant.

4. Are there any conditions?

The department may impose reasonable conditions on informal requests. That means conditions that are common sense in the circumstances. This will vary depending on the work your business unit does, the information requested, the availability of information, the work involved, when the request is being made and who is requesting the information.

If you believe you need to apply reasonable conditions and have negotiated them with the applicant, they may include:

- The information may be viewed but not copied (e.g. where copyright is a concern)
- The information may be released to the applicant but not disclosed to third parties or published in any format
- The information may be used for research purposes but not for commercial application
- A copy of the record may be released with all information concerning or identifying third parties deleted (e.g. where the applicant's name is included in a list of other people)
- The information may be included in a summary of the information contained in the department's records (e.g. summary of a database)
- The information will not be released to the person immediately but within a stated timeframe after it is published or released (in the case of research, for example)
- The information may be released in stages, according to workload demands, availability, publication restrictions or other conditions

- The applicant will need to pay for the cost of photocopying where the volume of records is high
- Limiting informal release processes to records that are on hand at the school or business centre, and excluding archived records.

Some areas of the department have already established conditions for informal release. Your manager or director may help to determine appropriate conditions for informal release in general terms for your business area or on a case-by-case basis. In all other cases contact the Information Access Unit who will provide suggestions and advice about appropriate conditions.

5. Can my business unit charge a fee?

No, the GIPA Act does not provide for your business unit to impose an application fee or processing charge for the informal release of information.

In some cases the cost to your school or business centre of providing informal access will be negligible and access can be given at no charge. However, if there is an actual cost to your business unit, it is reasonable to require the applicant to contribute to those costs.

Often an applicant will consider it reasonable to pay a small amount to obtain the information quickly and directly from the school, institute or business unit, rather than making a formal access application to the department.

Examples of reasonable conditions you may negotiate with the applicant are that they will:

- provide the paper required for making photocopies;
- pay the cost of photocopying at a reasonable rate where the volume exceeds 20 pages (e.g. 20 cents per page is the rate charged by some public libraries); or
- pay the cost of retrieving the records from the Government Records Repository.

If providing access would require work that makes a significant impact on the business unit's resources, or if the applicant does not agree to conditions you set, you should suggest the applicant makes a formal [access application](#).

The issue of costs will vary from one request to another and if in doubt, seek advice from your manager or director, or the [Information Access Unit](#).

6. Am I obliged to provide information under informal release if requested?

No. The department encourages informal release of information where it is appropriate and the request is manageable. However, officers are not obliged to provide access in this way. Your response to an informal request for information is not subject to review.

You should consider access in relation to existing records only; you are under no obligation to create new documents.

If informal access is not provided, ensure you tell the applicant about their right to make a formal access application.

7. What's the advantage in providing access by informal release?

Deciding whether informal access is the better option for your business unit will take into account the nature of the request and your available resources.

Advantages are that informal release is subject to reasonable conditions, you can negotiate directly with the applicant about what is provided and when, and the decision is not subject to review. The protections for informal release are the same as those for formal release.

If the information is not released informally, and the applicant makes a formal access application, strict time limits and other conditions will apply. Any processing charges for a formal release application are paid into general revenue, so your business unit is not directly reimbursed for any of the costs.

8. Can any departmental officer provide access by informal release?

No. Only 'authorised officers' may provide access to information in their area of responsibility under informal release. Click on this link to see a list of authorised officers [department delegations intranet webpage](#). It includes school principals, Principals' Network Directors, Executive Directors and state office directors.

Authorised officers who release information in good faith under informal release are not exposed to any personal liability or to any action in breach of confidence or defamation, and are protected from any criminal liability that may result from disclosure. The same applies when information is released under a formal application.

An authorised officer deciding a formal access application may choose to provide the information under informal release as an alternative to going through the formal process and the same protections apply.

9. Is there a time limit?

Ideally an informal release request should be completed within 20 working days of receipt.

If it is likely to take longer than this to respond and you are unable to negotiate a longer time, the applicant should be invited to make a **formal** [access application](#).

10. What kind of information can be provided under informal release?

This will vary depending on who is making the request.

All information in records held by the department, including in schools, whether created or maintained by staff as part of their official duties, or received from elsewhere, are records of the department and are subject to the access provisions of the GIPA Act, including informal access. Further details are given in the guideline [reasonable searches – search officer guidelines](#).

Informal access may be suitable for such records as correspondence between the applicant and the department, statistical information that is not already on the website and which is not sensitive or controversial.

Informal release is **not suitable** if:

1. there is an overriding public interest against disclosure (OPIAD) of the information;
2. there is information relating to third parties which might cause them concern if released; or
3. the workload involved in searching for, retrieving or compiling and deciding on the release of the information would impact unreasonably on your resources.

See item 12 regarding **workload** and item 15 for further details about the **balance of public interest**.

When information is released informally, it may be done in a form omitting, deleting or blocking out information which would otherwise prevent its informal release. Care should be taken to ensure that the blocked out information cannot be read. (TIP: use an appropriate permanent marker and if information can still be read despite being blacked out, photocopying the document several times may work).

The following types of records are generally **not appropriate to release informally**:

- Records in draft form or not yet approved
- Records containing confidential information (including commercial information)
- Records dealing with internal staff disciplinary or grievance matters
- Records that are prohibited from disclosure by legislation
- Records relating to legal proceedings
- Records that are copyrighted by a third party other than the State of NSW
- Records which may be defamatory
- Records containing sensitive personal information, such as student counselling records.

11. Is identification required for access to personal information?

Personal information means information or an opinion about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the context. Personal information does not include:

- Information about a person who has been dead for more than 30 years
- Information about officers undertaking their professional duties (e.g. staff member's name, position, work contact details, their suitability for employment).

For privacy reasons, a person requesting his or her own personal information needs to apply in writing and provide identification with signature & photo. The exception is if the decision-maker is satisfied as to the applicant's identity (e.g a current staff member within the business unit or the parent of a student who has previously provided ID to the school).

A person requesting access on behalf of another person (including the parent applying on behalf a child aged 12 years or over) must provide written permission from the other person and identification for that person and themselves.

If there is a court order that denies parental responsibility to one parent for the long term care of a child, or that gives sole responsibility of educational matters to one parent or a legal guardian, the parent denied responsibility for the child is not entitled access to records or information about that child from the State educational institution. In such circumstances, a parent or their legal representative may seek access only by lodging a formal access application under the GIPA Act or through court procedures, such as the issuing of a subpoena, available in relation to court proceedings.

12. Workload and unreasonable diversion of resources

Informal release is not suitable if the work involved in searching for, retrieving, compiling and deciding on release of the information will unreasonably divert the resources of your business unit.

The authorised officer will exercise their judgement to determine what is a reasonable workload according to the work you do and the resources available at the time the request is made. In most cases, more than 3 hours will not be reasonably manageable. As a guide, reasonable times are:

- **Schools:** 1 hour or less is usually reasonable
- **Other business areas:** up to 3 hours may be reasonable, depending on the kind of work done.

Cumulative related requests may be considered together. This is where a person makes multiple requests over a relatively short period which individually might be appropriate for informal release, but when considered together impose an unreasonable burden on the business unit's resources.

13. Do I have to keep a record?

This process is intended to reduce formal applications, including the need for detailed record-keeping. It is not necessary to inform the Information Access Unit when you have released information informally unless the request has come to you via an Information Access Officer enquiry.

You should use your own discretion about whether it is necessary to keep a record of the process; it will vary from case to case. Your manager or director may ask you to keep a record. Keeping a record of your decision may assist in future if the information is requested by other people or under a formal access application.

A [checklist](#) and [record form](#) for informal release are available for all department business units. A specific [schools checklist](#) is provided for Principals dealing with requests for access to student records.

14. What about subpoena and court orders to produce documents?

You should continue to respond to subpoenas and other court and tribunal orders in the usual way. The Legal Services directorate issues [Legal Bulletins](#) about these kinds of requests.

If informal release is requested and you have previously provided the same information to the applicant or their legal representative under a subpoena or other court order, please contact the Information Access Unit immediately as the GIPA Act states that the department does not have to provide it again.

15. Balance of public interest – is there an overriding public interest against release?

The [informal release checklist](#) will help you to make this decision.

Information that should not be released informally

For some categories of information informal release is not suitable because the GIPA Act states that there is a presumption against release, that is, there is always an overriding public interest against disclosure (OPIAD) (under Schedule1). Informal release is not appropriate if the information:

- is covered by a secrecy provision
- is subject to legal professional privilege
- concerns a report to Community Services
- relates to the HSC or ATAR ranking or assessment of students, or

- is Cabinet, Executive Council information or its release would be contempt of court or Parliament.

The applicant may make a formal access application for this kind of information.

When is there an overriding public interest against disclosure?

The next step is to assess whether there is an overriding public interest against disclosure.

There is no limit to the number of public interest considerations **in favour of release**, such as where disclosure could:

- promote open discussion of public affairs
- enhance Government accountability
- contribute positively to informed debate on issues of public importance
- inform the public about the operation of agencies and their policies and practices for dealing with the public
- ensure effective oversight of expenditure of public funds, or
- the information is personal information of the person requesting access.

There are six categories of public interest considerations **against release**. These are listed in the Table at s.14 of the GIPA Act as:

1. Responsible and effective government
2. Law enforcement and security
3. Individual rights, judicial processes and natural justice
4. Business interests of agencies and other persons
5. Environment, culture, economy and general matters
6. Secrecy provisions.

If there appears to be a public interest against release, the decision-maker should decide if deleting parts of the information would remove the grounds for declining informal release.

The [Information Access Unit](#) can provide advice and assistance for [authorised officers](#) making decisions about informal release.