

## **Guidelines for the proactive release of government information held by the Department of Education**

These guidelines have been developed to assist employees of the Department of Education to decide whether information held in their business area is suitable for “proactive release” and if so, whether to release the information in full or in part and if it should be published. School-based employees are referred to [guidelines for schools – GIPA Act](#).

### **What is Proactive Release?**

Any information held by an area of the department that raises public awareness and understanding of our functions and/or information that is routinely requested by members of the public, either informally or formally under the GIPA Act, should be considered for proactive release.

Proactive release differs from formal and informal applications because information sought by the public may not be suitable for proactive release. This type of information may include personal information or information specific to the applicant.

The department encourages proactive release of information and reviews its program for proactive release annually. It is also a requirement under the Government Information (Public Access) Act 2009 (GIPA Act).

### **What type of information can be proactively released?**

Any information that may be of interest to the public generally, for example:

- Statistics and data
- Strategies, policies, plans and reports
- Research partnerships
- Research and discussion papers
- National partnerships
- Public reviews and inquiries
- Evaluation reports
- Project information (informing the public of the progress)
- Bulletins and fact sheets
- Budget estimates or spending of public money
- Newsletters and media articles
- Any other information identified by the business area holding the information

### **What information should not be proactively released?**

Excluded information under Schedule 2 of the GIPA Act which includes:

- Ranking or assessment of students by Higher School Certificate results
- Court records including Coroner’s records
- Investigations by the ICAC, Ombudsman, Child Death Review Team

Also, there is a conclusive presumption against disclosing certain information under Schedule 1 of the GIPA Act including:

- Information that would reveal Cabinet deliberations
- Commercial-in confidence portions of contracts
- Information subject to legal professional privilege
- Health & safety risks at schools arising from student behaviour (Part 5A Education Act)
- Care and protection of children including mandatory reports to Community Services

The department can make information it holds publicly available, unless there is an [overriding public interest against disclosure](#) (OPIAD). ([Section 7 \(1\) of the GIPA Act](#))

Considerations in section 14 of the GIPA Act are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1)
- exempt documents under interstate Freedom of Information legislation.

#### **Does your area hold information that can be proactively released?**

- Does your business area hold any types of information listed above?
- Does your business area regularly receive requests for certain types of information that would be of interest to the public?
- Are you working on something that would be of interest to the public?
- Will publishing the information promote transparency and accountability?

#### **Before proactively releasing have you considered the following?**

1. Privacy: Does the information contain any “personal information” as defined under the [Privacy and Personal Information Protection Act 1998](#) (Part 1 section 5) and the [Health Records Information Privacy Act 2002](#). (Part 1 section 5)
2. [IPC Guideline 4](#) provides more details about personal information.
3. Copyright: Is it an issue? Do you have permission from the copyright owner?
4. Contracts: Does the information reveal commercial-in-confidence provisions of a contract?
5. Prejudice: Does the information prejudice any person’s legitimate business, commercial, professional or financial interests? Does it contain legal advice?
6. Cost: Does making the information publicly available impose unreasonable additional costs on the department?
7. Will continued proactive release of similar information in the future cause you any difficulties?

If **YES** to any of the above:

1. Has the person consented in writing to their personal or business information being disclosed and published, and was a privacy notice given at the time of

collecting the personal information which covers the use and disclosure for this purpose?

2. Would deleting some of the content (e.g. third party business or personal information) make it possible to release the information in part?
3. If the legal advice is deleted can the remainder of the document be released? Would the owner of the legal advice agree to waive the legal privilege?
4. If unreasonable additional costs are an issue, is it possible to make available part of the information?
5. Can you make clear in the publication that ongoing proactive release will be dependent on resources?

The Right to Access unit, Legal Services manages the department's responsibilities under the GIPA Act. Please telephone (02) 7814 3525 or email [GIPA@det.nsw.edu](mailto:GIPA@det.nsw.edu) if you require assistance.

### How do I prepare the information for proactive release?

1. Identify the authorised officer to proactively release the information ([authorised officer](#)) and discuss whether it is suitable to make the information available.
2. Work out the best time to proactively release the information (it may be suitable for some information to be released before the end of a project).
3. Find the right webpage to publish it on. Does your business unit have its own website or would it sit better on the department's '[Strategies and reports](#)' webpage, or another webpage? Contact [Communication and Engagement for assistance](#).
4. Advise the [RTA unit](#) of your actions, so that the information can be included in the department's annual review of its proactive release program.

### Proactive Release Checklist

Checklist	Yes / No
Is the information appropriate for release?	
Has the information been considered for: <ul style="list-style-type: none"> <li>- Copyright</li> <li>- Third party information</li> <li>- <a href="#">OPIADs*, for example:</a> <ul style="list-style-type: none"> <li>- Personal information</li> <li>- Confidential information</li> <li>- Business interests of agencies and other persons</li> <li>- Information of another State or Commonwealth agency</li> </ul> </li> <li>- A conclusive presumption against disclosure' or exclusion under Schedules 1 &amp; 2 of GIPA Act (such as Cabinet information, legal professional privilege, ranking or assessment of HSC students, care and protection of children, ICAC or Ombudsman information, court records)</li> </ul>	

<p>Have you identified where it will be published on the internet? e.g.</p> <ul style="list-style-type: none"> <li>- Your own business unit webpage</li> <li>- department's general <a href="#">strategies and reports page</a></li> <li>- a webpage identified by <a href="#">Communication and Engagement</a></li> <li>- department's <a href="#">evaluation repository</a> on <a href="#">CESE</a> website</li> <li>- the <a href="#">Education Datahub</a></li> </ul>	
<p>Has the author of the information been advised of its release (e.g. consultant, other agency, business)?</p>	
<p>Has the release of information been approved by an '<a href="#">authorised delegated officer</a>'?</p>	

★ OPIADs – [Overriding public interest against disclosure](#) under section 14 of the GIPA Act

These guidelines comply with the [fact sheet from the Information and Privacy Commission \(IPC\) on authorised proactive release of government information](#).

### Proactive Release Flow Chart

Identify information/record for release



Review for public interest considerations and copyright



Submit information/record to authorised officer for approval



Identify suitable Internet location for publication



Authorised officer to approve upload to Internet



A) Once approved, send to the PSO, Office of Deputy Secretary, Strategy and Evaluation, for upload to the appropriate departmental website

OR

B) where, approved for local/unit upload, upload to business unit website



A) Strategy and Evaluation has Communication and Engagement load to the relevant departmental website



A & B) Advise Right to Access unit of the information proactively released