

DoE Staff Guidelines Informal release of information under the GIPA Act

Informal release is one option for the Department of Education to consider in providing the public with access to Government information.

These guidelines may assist DoE officers to decide whether informal access is a suitable option when dealing with a request for access to information for which they are responsible. The guidelines provide general guidance and may be interpreted flexibly. If any aspect of the guidelines needs to be modified to suit the particular request, staff are encouraged to consult with Right to Access.

1. [Release of Government information held by the Department](#)
2. [Background](#)
3. [When is informal release appropriate?](#)
4. [Are there any conditions?](#)
5. [Can my business unit charge a fee?](#)
6. [Am I obliged to provide information under informal release if requested?](#)
7. [What's the advantage in providing access by informal release?](#)
8. [Who is authorised to provide access by informal release?](#)
9. [Is there a time limit?](#)
10. [What kind of information can be provided under informal release?](#)
11. [Is identification required for access to personal information?](#)
12. [Workload and unreasonable diversion of resources](#)
13. [Do I have to keep a record?](#)
14. [What about subpoena and court orders to produce documents?](#)
15. [Balance of public interest – is there an overriding public interest against release?](#)

[Informal Release - Summary for business units](#)
[Informal Release - Information for the public](#)

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 in government records, including records held by the Department of Education.

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

- a. Open access – or ‘mandatory’ and ‘proactive’ release - usually publishing the information on the website, or otherwise making it available free or for a reasonable charge (such as the Annual Report, published statistics, policy documents etc.) This includes some information about contracts the department has entered.
- b. Routinely, as part of a business unit’s day-to-day business (brochures, student classroom reports, copy of academic record etc.)
- c. Informal release in response to a request
- d. In response to an access application for formal release under the GIPA Act.

2. Background

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

Fundamental to the GIPA Act is the Government's commitment that agencies should facilitate access to government information promptly and at the lowest reasonable cost and that access should only be restricted when there is an overriding public interest against disclosure.

Formal access applications under the GIPA Act should be made only where the information is not publicly available, not routinely available through the usual administrative processes of the business unit or where informal release is not appropriate.

Under the legislation, all information in records held by the department, including in schools, whether created or maintained by staff as a result of performing their official duties, or received from elsewhere, are records of the department and are subject to the access provisions of the GIPA Act.

Routine requests to access information may be dealt with at the discretion of the relevant business area – the school or other business unit - or officers who are routinely responsible for the relevant records. This should be done in accordance with the department's existing administrative access arrangements.

3. When is informal release appropriate?

Informal release is subject to any reasonable conditions the department considers appropriate. Informal release gives you control as to whether dealing informally with a request will be suitable to the particular circumstances or your school, institute or business centre and the request. It allows you to negotiate directly with the applicant about the request while retaining the protections provided for formal release.

If a person requests information that is not publicly available or not routinely provided as part of the business unit's regular work, informal release may be a suitable alternative to a formal access application under the GIPA Act.

When a request for information is received, the decision-maker should consider if the information requested can be released informally.

This decision should be made and the applicant advised of the decision promptly, ideally within 10 to 20 working days of receipt of the request for information. The time may be negotiated with the applicant.

4. Are there any conditions?

The department may impose any reasonable conditions that it thinks fit to impose. It means conditions that would be 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.

Reasonable conditions may be negotiated directly with the applicant, and 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
- A copy of the record may be released with all information concerning or identifying third parties deleted (e.g. a list which includes the applicant amongst a list of 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 be released to the person within a specific period 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 paying for the cost of photocopying where the volume of records is high
- Limiting the time frame to records that are on hand at the school, institute or business centre (that is, excluding archived records)

Some portfolios 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. Otherwise Right to Access can provide suggestions and advice about appropriate conditions.

5. Can my business unit charge a fee?

The GIPA Act does not provide for an application fee or processing charge for providing access under informal release.

In some cases, the cost to your school or business centre of providing informal access will be negligible and providing free access will be suitable. However, where there is an actual cost to your business unit, it is reasonable to require the applicant to contribute to those costs.

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

The reasonable conditions that you may negotiate with the applicant *may* include, for example, an agreement that the applicant:

- provide the paper required for providing 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 the work to provide access would impact significantly on resources, or if the applicant does not agree to conditions you consider reasonable in the circumstances, you should invite the applicant to make 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 Right to Access.

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, authorised officers are not obliged to provide access in this way. There is no right of review to a decision made in response to an informal request.

Access is considered in relation to existing records only and staff are under no obligation to create new documents.

If informal access is not provided, the applicant should be invited to make a formal access application.

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

Part of the decision-making process is to decide whether informal access is the better option for you. This will vary according to the request and your available resources.

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

If the information is not provided under informal release, the applicant may make a formal access application, which includes strict time limits and places other conditions on the department. Any processing charges that may apply for formal release are paid into general revenue, so your business unit is not directly reimbursed for any of the costs of responding to a formal request.

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

No. Only authorised officers may provide access to information in their area of responsibility under informal release. The list of authorised officers can be found at the department's [GIPA delegations intranet webpage](#) and includes school principals, DELs 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 elect 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 receiving the request.

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 a result of performing 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 Guideline*.

Informal access may be suitable for records such 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 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 15 for further details about the **Balance of Public Interest and Workload**.

Informal release can include omitting, deleting or blocking out information which would otherwise prevent informal release. *Care should be taken* to ensure that the blocked information cannot be read. (TIP: if information can be read despite being blocked 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 information or opinion.

Personal information does not include:

- Information about a person who has been dead for more than 30 years
- Information about officers engaged in the exercise of their public functions (e.g. staff member's name, position, work contact details in connection with their usual duties).

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

A person requesting access on behalf of another person (including a parent applying on behalf of a child aged 12 years or over) must provide identification for *both* parties.

If a court order exists that denies parental responsibility to one parent for the long term care of a child, or 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 the child from the State educational institution. In such circumstances, a parent or their legal representative may seek access only by lodging an 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 informal release of the information unreasonably divert the resources of the business area.

What is a reasonable workload will depend on the work you do and the resources available at the time the request is made, and is at the discretion of the authorised officer. In most cases, more than 10 hours will not be reasonably manageable. As a guide reasonable times are:

- **Schools** 5 hours or less is usually reasonable
- **Other business areas**, up to 10 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, although individually might be appropriate for informal release, but when considered together impose an unreasonable diversion of the business area's resources.

13. Do I have to keep a record?

This process is intended to reduce the formal process, including the need for detailed record-keeping. It is not necessary to inform Right to Access when you have released information informally except where the request has come to you via an enquiry from us.

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 DoE 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. Legal Services 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 Right to Access immediately as the GIPA Act specifically 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* is provided to assist in making 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 (under Schedule1). Informal release is not available if:

- release is prohibited by a secrecy provision
- it is subject to legal professional privilege
- it concerns a report to Department of Communities and Justice
- it relates to the HSC or ATAR ranking or assessment of students, or
- it is Cabinet, Executive Council information or release would constitute contempt of court or Parliament.

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

Otherwise is there an overriding public interest?

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 on 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 a public interest against release is found, the decision-maker should decide if deleting the information would remove the grounds for declining informal release.

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

Informal Release of Government information under GIPA Act Summary for business areas

This summary may assist DOE [authorised officers](#) in dealing with requests for informal release of government information for which they are responsible under the *Government Information (Public Access) Act 2009*

- Check first to see whether the information requested is publicly available on the [Department's website](#) – statistical, policy and general information is added regularly.
- If you are not the officer responsible for the information requested, refer the inquiry to the most appropriate person (check with Right to Access if you are unsure).
- If it is a media request, refer the caller to the Media Unit on 7814 1559.
- Assist the person seeking informal release to identify the records required.
- Explain that although there is no application form, the request for informal access to personal information (e.g. student records held in the school or institute) must be in writing to ensure that the correct records are accessed and for privacy compliance.
- Make a decision on informal release (using the guidelines, checklists and tools on the website) and communicate it to the applicant within 20 working days (or school days) of receiving the request, if possible.
- Ensure that, before releasing personal information, the applicant provides you with identification, preferably including a photograph and signature; if applicant cannot provide this, other documents that satisfy you as to identity may be accepted.
- Ensure that access is permitted only to those parts of records requested and where personal information is requested, only to the information which relates to the person applying.
- If you have decided to provide access to a copy of the information by blocking out certain information (e.g. another person's information, commercial in confidence material etc.) ensure that the blocked information cannot be read.
- If you are providing access by inspection, negotiate a mutually convenient date and time for the applicant to inspect the documents and ensure that the applicant is supervised.
- Arrange for photocopies or electronic copies (e.g. compact disc) of any records, or parts of records, requested to be provided to the applicant as you have agreed.
- Where you have declined the request for informal release, advise the person a formal [access application](#) may be lodged.
- **If in doubt – don't give it out. Don't be pressured into informal release. Take your time to make the right decision and discuss it with your manager or director. You can also contact Right to Access on (02) 7814 3525 or gipa@det.nsw.edu.au if you have any doubts about informal release.**



Informal Release - Information for the Public

Government Information (Public Access) Act 2009

If you wish to access information held by the NSW Department of Education we recommend that in the first instance you visit our website <https://education.nsw.gov.au/rights-and-accountability/information-access>

Routine requests to access information from the department's records are dealt with at the discretion of the relevant school, or other business centre or officers who are routinely responsible for the relevant records. This is done in accordance with the department's existing administrative access arrangements.

If you are unable to find the information you are seeking on the website or through routine release, please contact the business centre responsible for the records to discuss whether the information is suitable for **informal release**.

There is no fee or charge and no application form for informal release, though we may negotiate with you to pay actual costs associated with photocopying or retrieving archive records. We may also ask you to put your request in writing to ensure we understand what you are seeking and assist in accurately identify records.

Information requested will generally be provided unless there is an overriding public interest against disclosure or the work involved would impact unreasonably on resources of the business unit. For schools the work is considered unreasonable if it exceeds 1 hour. For other business units the timeframe will vary and is at the discretion of the authorised officer responsible for the records. Where the work required is likely to exceed 3 hours informal release will usually be declined. You may make an access application for formal release under the GIPA Act.

If you are seeking your own personal information you will need to provide identification, for privacy reasons. If you are requesting personal information on behalf of another person you need to provide identification and authority for that person and identification for yourself.

If you are a parent or legal guardian seeking information about your child, you need to provide evidence of the relationship if that is not already available to the school or business area. If the child is aged 12 years or over, you will also need to provide written authority from the child to access their counselling records, for privacy reasons.

The business unit – the school or other business centre - will usually let you know within 5 working days whether the information can be released informally, unless you have agreed to a longer time. If the information is not available under informal release, you may make a formal access application.

The department cannot be made to provide information in response to an informal request and can impose reasonable conditions on informal release. Access is permitted to existing records only and staff are under no obligation to create new documents. There is no right of review to a decision made in response to an informal request.

Note: Information concerning related statutory bodies, the NSW Educational Standards, TAFE and NSW Institute of Teachers, are handled by those agencies.

In the first instance, please contact the business centre likely to hold the information you require. Help is also available from:

Manager, Right to Access, Legal Services
Department of Education

GPO Box 33, Sydney NSW 2001

Tel: (02) 7814 3525

Email: gipa@det.nsw.edu.au