



Fact sheet

GIPA Act Fees and Charges

December 2018

This fact sheet is designed to clarify the circumstances in which fees and charges for access to information may be levied, reduced, waived or refunded under the *Government Information (Public Access) Act 2009* (GIPA Act).

The GIPA Act aims to foster and promote responsible and representative government that is open, accountable, fair and effective by:

authorising and encouraging the proactive public release of government information by agencies, giving members of the public an enforceable right to access government information, and providing that access to government information is restricted only when there is an overriding public interest against disclosure.¹

Consistent with this object, Parliament intends that the GIPA Act discretions be exercised to facilitate prompt access to government information at the lowest reasonable cost.²

In most cases, government information sought under the GIPA Act should be made available free of charge. In some circumstances, the GIPA Act allows agencies to charge for information.

Open access information – free of charge

Section 6 of the GIPA Act makes it mandatory for agencies to disclose some information proactively and free of charge, unless there is an overriding public interest against disclosure. This information is known as 'open access information' and comprises:

an agency information guide
documents tabled in Parliament by, or on behalf of, an agency

an agency's policy documents

a disclosure log of information released under formal access applications

a register of contracts an agency has with private sector entities for a value of more than \$150,000 (including GST)

a record of the open access information that is not made public due to an overriding public interest against disclosure, and

information that the GIPA Regulation provides is 'open access information'.³

Clause 4 of the *Government Information (Public Access) Regulations 2018* (GIPA Regulation) specifies that an advertising compliance certificate issued under the *Government Advertising Act 2011* is open access information.

Clause 6 of the GIPA Regulation also specifies that Ministers must disclose media releases and details of overseas travel, while government departments must publish a list of their major assets, the total number and value of properties disposed of in the previous financial year, and their guarantee of service and code of conduct (if any). For local councils, the GIPA Regulations contain an extensive list of additional open access information that must be made publicly available, including:

annual, financial, and auditors' reports, management plans and various codes

returns of the interests of councilors, designated persons and delegates

¹ GIPA Act section 3(1)

² GIPA Act section 3(2)

³ GIPA Act section 18

agendas, business papers and minutes of meetings
 information contained in certain registers;
 plans and policies
 development applications and associated documents, and
 information concerning approvals, orders and other documents.⁴

All open access information must be available free of charge on an agency's website, unless this would impose an unreasonable cost on the agency.⁵ Local councils must also make the information available for inspection and copying at council offices.⁶

Agencies may charge for open access information **only** if it is available for free in at least one other format. Clause 5(1)(b) of the GIPA Regulations provides that local councils may impose copying charges "not exceeding the reasonable cost of photocopying".

Authorised proactive release of information – free of charge or at the lowest reasonable cost

In addition to open access information, agencies are authorised to release other information proactively, unless there is an overriding public interest against disclosure. Information that an agency chooses to disclose proactively may be released free of charge, or at the lowest reasonable cost.⁷

Information released informally

Agencies are authorised under section 8 of the GIPA Act to release any government information they hold to people requesting it, in the absence of an overriding public interest against disclosure, without requiring an access application to be lodged.

Where the information requested is open access information, or additional information that has

been released proactively, agencies may charge as provided for in sections 6(3) and 7(2) of the GIPA Act.

Agencies should, in considering the release of information informally, apply the object of the GIPA Act and in particular the intent of Parliament to facilitate the prompt access to government information at the lowest reasonable cost.

Access applications – charges apply

The provisions of the GIPA Act dealing with access applications set out requirements for fees and charges. The GIPA Act requires payment of an application fee, and enables agencies to impose other charges to cover the costs of processing the application. The GIPA Act and the GIPA Regulations specify when the fees and charges may, and in some cases, must, be waived, reduced or refunded. In addition, section 127 of the GIPA Act provides agencies with a general discretion to waive, reduce or refund any fee or charge that may be imposed under the GIPA Act in any circumstance they consider to be appropriate.

Application fee

An application fee of \$30 is payable by an applicant to an agency when lodging an access application for government information,⁸ unless the fee has been waived by the agency. If the application is transferred to another agency, the fee is payable to the original agency only, and not to the transfer agency.⁹

In some circumstances an agency may receive an application directly from an applicant and then also receive an application transferred from another agency that was made to that agency by the same applicant, for the same information. In this example as the applicant has paid the application fee twice, an agency may wish to apply the discretion provided by section 127 to refund one of the application fees.

An agency does not have to refund the application fee if:

⁴ GIPA Regulation Schedule 1

⁵ GIPA Act section 6(2)

⁶ GIPA Regulation clause 5(1)

⁷ GIPA Act section 7(2)

⁸ GIPA Act section 41(1)(c)

⁹ GIPA Act section 48(4)

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

the application is amended or withdrawn¹⁰

the agency refuses to deal with the application,¹¹ unless it is a deemed refusal because the application was not decided within the specified time frame (see below)

the applicant fails to pay any advance deposit requested by the due date,¹² or

the application was transferred to or from the agency, despite the agency not deciding the application within time.¹³

An agency must refund an application fee if:

the agency has not decided the application within the specified time, known as a “deemed refusal”. The obligation to provide a refund does not apply if the application was transferred to or from the agency,¹⁴ or

the application is invalid for a reason other than failure to pay the application fee.¹⁵

Processing charges

Agencies that receive access applications, or have applications transferred to them, may impose a charge for processing the application of \$30 per hour.¹⁶ The \$30 application fee also counts towards the first hour of processing.¹⁷ The processing time for an application, as set out in section 64(2), is the total amount of time that is necessary to be spent by any officer of the agency in:

- a) dealing efficiently with the application (including consideration of the application, searching for records, consultation, decision-making and any other function exercised in connection with deciding the application), **or**
- b) providing access in response to the application (based on the lowest reasonable

estimate of the time that will need to be spent in providing that access).

When an agency notifies an applicant of a decision to provide access to information, the applicant must also be notified of any processing charges that will apply and how they have been calculated.¹⁸ Under section 64(4) access to the information may be made conditional on the payment of the processing charge.

A processing charge must not be discounted under section 65 or 66 by more than 50% even if both sections apply.¹⁹

Advance deposit

An applicant may be asked to pay an advance deposit of up to 50 per cent of the estimated processing charge.²⁰ Under section 68, the notice requiring an advance deposit must:

- include a statement of the processing charges for work already undertaken by the agency in dealing with the application, and
- include a statement of the estimated processing charges for work that will need to be undertaken by the agency in dealing with the application, and
- specify a date by which the advance deposit must be paid (being a date at least four weeks after the date the notice is given), and
- include a statement that if the advance deposit is not paid by the due date, the agency may refuse to deal further with the application and that this will result in any application fee and advance deposit already paid being forfeited.

An agency can extend the date for payment of an advance deposit,²¹ and is required to give the applicant notice of any extension and indicating the new date by which the advance deposit must be paid.

¹⁰ GIPA Act section 49 and section 50

¹¹ GIPA Act section 60(6)

¹² GIPA Act section 68(3)(d)

¹³ GIPA Act section 63(5)

¹⁴ GIPA Act section 63(5)

¹⁵ GIPA Act section 52(5)

¹⁶ GIPA Act section 64

¹⁷ GIPA Act section 64(3)

¹⁸ GIPA Act section 62

¹⁹ GIPA Act section 64(5)

²⁰ GIPA Act section 69

²¹ GIPA Act section 68(4)

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

The applicant is entitled to a refund of any overpayment,²² but is not entitled to have the deposit refunded if the application is withdrawn.²³

The period within which an agency must decide an application stops running when the decision to require an advance deposit is made. The time starts running again when the deposit is paid.²⁴

Example 1 – What you should say in giving an advance deposit notice

Agency A writes to Applicant X on 26 June 2014 advising of Agency A's decision to grant access to the information requested by Applicant X. The notification contains the following:

We estimate that the charge for processing your access application will be \$900, based on 30 hours of processing time. To date, four hours of time has been spent, and we estimate that a further 26 hours will be necessary to consider and compile the information you have requested. Our calculations are based on the following:

Application fee and 1st hour of processing = \$30

Next 29 hours @ \$30/hr = \$870

TOTAL = \$900

Before proceeding any further with your request, we require a deposit of \$450, being 50 per cent of the estimated cost, to be paid on or before 27 August 2014. Failure to pay by the due date means that we may refuse to deal further with the application. This will result in forfeiture of any fee or charge already paid.

Personal information

If an applicant is applying for their own personal information, or applying on behalf of someone else for that person's personal information, agencies cannot charge for the first 20 hours of processing.²⁵

Example 2 – Applying the advance deposit and personal information provisions

If Applicant X in Example 1 were applying for his or her own personal information, the calculations would be as follows:

Application fee and 1st hour of processing = \$30

Next 20 hours @ \$0/hr = \$0

Next 9 hours @ \$30/hr = \$270

TOTAL = \$300

Financial hardship

Section 65 states that applicants are entitled to a 50 per cent discount in processing charges if they can demonstrate financial hardship. The discount applies only to the processing charge, not the application fee. However, the application fee covers the first two hours of processing time, not just the first hour as would normally be the case.

This provision is supplemented by clause 10 of the GIPA Regulations, which states that the financial hardship reduction will apply if the applicant provides evidence that he or she:

- is the holder of a Pensioner Concession card issued by the Commonwealth that is in force, or
- is a full-time student, or
- is a non-profit organisation (including a person applying for or on behalf of a not for profit organisation).

Agencies may choose to waive, reduce or refund the fees and charges in other circumstances using the general discretion in section 127.

²² GIPA Act section 71(2)

²³ GIPA Act section 50(2)

²⁴ GIPA Act section 68(2)

²⁵ GIPA Act section 67

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

Example 3 – Applying the advance deposit and financial hardship provisions

If Applicant X in Example 1 holds a Pensioner Concession card, the calculations would be as follows:

Application fee and 1st two hours of processing = \$30

Next 28 hours @ \$30/hr = \$840

SUB TOTAL = \$840

Less 50% discount = \$420

TOTAL = \$420

If Applicant X in Example 2 holds a Pensioner Concession card, the calculations would be as follows:

Application fee and 1st two hours of processing = \$30

Next 20 hours @ \$0/hr = \$0

Next 8 hours @ \$30/hr = \$240

SUB TOTAL = \$240

Less 50% discount = \$120

TOTAL = \$120

Alternatively, depending on the circumstances, the agency may decide to waive the fees and charges, or further reduce them under section 127.

Special benefit to the public generally

Under section 66 of the GIPA Act applicants are entitled to a 50 per cent reduction in processing charges if the agency is satisfied that the information applied for is of special benefit to the public generally.

The 50 per cent reduction operates in the same manner as the reduction for financial hardship, and the discretion under section 127 also still applies.

If the information sought is made publicly available before, or within three working days after, the applicant is granted access, the

applicant is entitled to a *full waiver* of the processing charges.²⁶

Agencies are able to use their discretion to determine when an access application relates to information that is of special benefit to the public generally. *Guideline 2: Discounting charges* explains how section 66 should be interpreted and applied.

A processing charge must not be discounted under section 65 or 66 by more than 50% even if both sections apply.²⁷

Example 4 – proper application of advance deposit and special benefit to the public

If Applicant X in Example 1 submits that the release of the information would be of benefit to the public in that the information would, for example, inform public debate on the issue, the calculations would be as follows:

Application fee and 1st hour of processing = \$30

Next 29 hours @ \$30/hr = \$870

SUB TOTAL = \$870

Less 50% discount = \$435

TOTAL = \$435

Agencies can apply reductions to the amounts calculated as processing charges in terms of section 65 (financial hardship) and section 66 (special public benefit) of the GIPA Act but the reductions provided by these sections are not cumulative.²⁸ That is, they cannot be combined to give a discount of 100 per cent in processing charges. This was confirmed by the NSW Civil and Administrative Tribunal in the decision of *National Tertiary Education Union v Southern Cross University [2015] NSWCATAD 151*.

²⁶ GIPA Act section 66(2)

²⁷ GIPA Act section 64(5)

²⁸ GIPA Act section 64(5)

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

Review of decisions about fees and charges

Section 80 provides that decisions to:

- impose processing charges
- require an advance deposit
- refuse to reduce processing charges, or
- refuse to deal further with an application because a deposit has not been paid

are reviewable by the agency, the Information Commissioner, and the NSW Civil and Administrative Tribunal (NCAT).

If an applicant, or a third party to whom an application relates, chooses to seek a review of an agency's decision regarding access to information, the following fees apply:

Internal review

For an internal review by the agency that made the decision, a \$40 fee is payable.²⁹ The fee is refundable if the agency does not conduct the review within the specified time frame.³⁰ No processing charges are payable for internal reviews.³¹

This fee is not payable where an internal review is recommended by the Information Commissioner under section 93(6).

External review

No fee is payable for an external review by the Information Commissioner.

For review by NCAT a filing fee applies. For further details, please refer to the NCAT website at www.ncat.nsw.gov.au.

For more information contact:

Information and Privacy Commission NSW (IPC)

Freecall: 1800 472 679
 Email: ipcinfo@ipc.nsw.gov.au
 Website: www.ipc.nsw.gov.au

NSW Civil and Administrative NCAT (NCAT)

Telephone: 1300 00 NCAT or 1300 006 228 and follow the prompts

Website: www.ncat.nsw.gov.au

Interpreter Service (TIS): 13 14 50
 National Relay Service for TTY Users: 13 36 77

²⁹ GIPA Act section 85

³⁰ GIPA Act section 86

³¹ GIPA Act section 87

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.