

**INQUIRY INTO SERVICE COORDINATION IN
COMMUNITIES WITH HIGH SOCIAL NEEDS**

Organisation: Information and Privacy Commission NSW

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The Director
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: socialissues@parliament.nsw.gov.au

Dear Director,

Submission to the Inquiry into service coordination in communities with high social needs

My submission addresses the following issues:

- the importance of improving service coordination in high social need communities
- the role of the Information and Privacy Commission (IPC) and my role as the Chief Executive Officer and NSW Information Commissioner
- the *Government Information (Public Access) Act 2009* (GIPA Act) as an enabler of information sharing for service coordination
- the perceived and actual role of accessing government information to enable effective service coordination
- some relevant IPC regulatory activities, and
- directions for the future.

Additionally I understand my colleague Dr Elizabeth Coombs, the NSW Privacy Commissioner, has provided the Standing Committee with her submission to the inquiry.

The importance of improving service coordination in high social need communities

The Standing Committee's focus on this topic is timely and is to be commended. As highlighted in the East Dubbo Minister's Action Group Discussion Paper Report (July 2013) there can be pockets of intense social, economic and cultural disadvantage where communities have severe and complex needs that extend across employment, education, parenting support, domestic violence, accommodation and housing and health services.

Meeting these needs requires effective consultation, planning and delivery of often siloed services in a coordinated, client-focused way. Service coordination is essential to support individuals, families and communities to achieve improved physical and mental health, increased economic and social participation, and safer, more cohesive communities. There is a clear public value in facilitating information sharing of personal information (including health information) to enable these benefits to be realised.

One of the challenges for high-need communities is that addressing needs effectively (through, for example case coordination or case management) can require the collection and consideration of greater amounts of personal information than for

'mainstream' clients. Another challenge is that disadvantaged communities can also feel powerless and excluded from decision-making processes.

Effective coordination is easier with purposeful exchange of information based on sound, structured decision making that is also transparent and open so as to maximise community participation and trust.

The roles of the IPC, the Chief Executive Officer and NSW Information Commissioner

The IPC is an independent agency established under the *Government Sector Employment Act 2013* (GSE Act). The Information Commissioner is recognised under the GSE Act as the agency head and performs all chief executive officer functions. The intent of Parliament was to create a single office while the roles of the Information Commissioner and Privacy Commissioner remained functionally independent. Parliament's intent was to provide a single point of service in respect to information access and privacy rights. This has involved ensuring that agencies and individuals can access consistent information, guidance and coordinated training about information access and privacy matters.

The IPC administers the following NSW legislation:

- the GIPA Act
- *Government Information (Information Commissioner) Act 2009* (GIIC Act)
- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)

The Information Commissioner is an independent statutory officer that reports directly to Parliament. The Information Commissioner is overseen by the Parliamentary Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission. This independence enables the Information Commissioner to assist agencies, measure and monitor agency compliance with the GIPA Act and to consider, review and investigate agency conduct in an objective, transparent and arms-length manner.

Examples of specific functions of the Information Commissioner conferred by the GIPA Act and GIIC Act include: promoting public awareness and understanding the GIPA Act; promoting its object (i.e. open government); providing advice and training to agencies; receiving and dealing with complaints; conducting external reviews; conducting inquiries and investigations; monitoring, auditing and reporting on agency compliance with the GIPA Act; issuing guidelines and factsheets for agencies and the public; and reporting to NSW Parliament on the operation of the GIPA Act.

The GIPA Act as an enabler of information sharing for service coordination

New South Wales citizens expect open, transparent and accountable government decision making. The second reading speech for the GIPA Bill and the GIIC Bill outlined Parliament's legislative intent for the GIPA Act to be a tool for open government supported by the Information Commissioner as a champion of open government.

Intent of the open access regime

The GIPA Act's objects are to maintain and advance a system of responsible, and representative democratic government that is open, accountable, fair and effective.

The GIPA framework is based on principles of proactive disclosure, an explicit presumption in favour of public disclosure of information, and a public interest decision-making test. The GIPA Act provides four pathways of information access

and disclosure, which NSW government agencies are required to use to disclose government information. These are mandatory proactive release (also known as open access), authorised proactive release, informal release and formal applications to access government information.

Growing role of the non-government sector in service provision

I note the shift in the provision of government services to the non-government sector and the increasing prominence of this sector's use of the GIPA Act to obtain government information using the formal pathway. I have submitted annual statutory reports to Parliament on the operation of the GIPA Act. Based on the data that I have received for the 2010-2013 and 2013-2014 reports, I note that formal applications for non-government organisations or community groups showed steady growth.

Currently, non-government organisations providing services to the public are not covered by the GIPA Act. However, section 121 of the GIPA Act does require agencies to have in place contractual requirements for access to information related to their performance and information collected from members of the public. Given the significant number of government services being provided by the non-government sector, I consider that there should be a legal obligation for institutions to comply with the requirements of GIPA Act when undertaking particular government services or functions. I have raised this issue as part of my submission to the Department of Justice's statutory review into GIPA Act and GIIC Act.

Removing barriers to information exchange for better service coordination using the GIPA Act

Barriers to effective service coordination have been consistently raised in reports prepared or commissioned by the NSW Government.

Identified barriers

In 2014 I contributed to the Department of Premier and Cabinet's (DPC) commissioned report prepared by the University of New South Wales Social Policy and Research Centre (SPRC). The SPRC report recognised that misconceptions by NSW public sector employees about frameworks governing the sharing of personal information impacted on coordination of services, case management and policy development.

One of the priorities of the IPC has been to engage in training and education. It is noteworthy that the SPRC report also emphasised that those in high need communities had particular needs and stated:

- any approach to ongoing education, training and promotion about the benefits of and need for personal information sharing should be undertaken across all sectors that work with vulnerable people in New South Wales. This finding is mirrored in the findings of the *Report on the Operation of the GIPA Act 2013 – 2014* (NSW Information and Privacy Commission, 2015).¹

The SPRC's report is available here:

http://www.dpc.nsw.gov.au/programs_and_services/governance.

In addition, a report prepared by the interagency Enabling Information Sharing Working Group and the report commissioned by DPC found that:

- information sharing is perceived as complex and front line and agency managers are risk averse in sharing information

¹ SPRC, p.90

- there are myths about the application of privacy protections despite legal authority that allows the collection, use and/or disclosure of personal information
- there is disparity between actual legal and policy context and the perceptions of those involved
- there is a need for clear guidance and direction that sets out what information may be shared, the circumstances, authority for information sharing and processes
- agency technological systems hinders the facilitation of information sharing or easy access to personal information due to, for example, configuration, formatting and uncontrolled accumulation of data, complex record keeping practices, and
- information is held in silos by agencies and not viewed as a resource to be shared.

The findings recognise that the statutory intent of the GIPA Act to activate the 'push model' of proactively releasing government information is not being fully realised in the government human services operating environment.

Role of the IPC and GIPA in addressing barriers

The theme of barriers is also ventilated in the reports on the operation of the GIPA Act, finding that the proactive and informal pathways are not being utilised to maximum effect. These barriers are identified in the SPRC's research on case studies. That research recognises both real and perceived barriers to information sharing in many services to vulnerable individuals. It also recognises the request for a greater understanding of the existing information access and privacy regimes. The GIPA Act establishes the pre-eminent presumption to access to government information.

GIPA Guideline 4 on personal information as a public interest consideration provides guidance to agencies on what personal information means and how to properly apply those considerations when carrying out the public interest test.

A strategic focus of the IPC has been to raise awareness of the GIPA legislation and achieve better decision making outcomes so that information is made available at the earliest point in the process. For example, the IPC's ongoing program of work has sought to address this by:

- focusing on early and greater proactive release in discussions between myself as Information Commissioner an agency heads, practitioners and policy inputs to legislative and operational initiatives
- developing and implementing the IPC's Information Management Scholarship Program that will offer short term placement with the IPC leading to better decision-making and implementation of GIPA by agencies
- launching e-learning modules on 'Access Training for Decision Makers'
- publishing recommendations of significant Information Commissioner reviews of agency decisions.

The GIPA regime demonstrates how, as an open government tool, information release can be done in a privacy respectful manner. For formal access applications relating to personal information, section 54 of the GIPA Act requires that agencies must take steps as reasonably practicable to consult with a person before providing access to personal information of that person. The IPC developed a specific guideline to assist agencies, applicants and third parties to whom a GIPA application

relates so that there is a consistent approach to applying the consultation provisions. This demonstrates the statutory intent of building a privacy respectful mechanism to permit consent based sharing of personal information relating to formal access applications.

Decision makers must weigh the public interest for and against releasing government information to determine whether there is an overriding public interest against disclosure. One such consideration may include the individual rights (i.e. the personal information of an individual) which may be a consideration in favour of or against disclosure. As a consideration against disclosure, clause 3(a) and (b) of the table in section 14 of the GIPA Act list revealing personal information and contravening the PPIP Act or HRIP Act as factors when weighing the public interest. However, I note that the privacy of individual is only a consideration in the determination recognising Parliament's intent that privacy is not considered a barrier to appropriate information release.

Relevant regulatory activities

The IPC undertakes a number of activities to support information release and open access, in ways that assist service co-ordination.

Improving agency understanding of the open access regime

For example, recently released factsheets include:

- Authorised proactive release of government information – to provide guidance and self-assessment tool for agencies on how agency proactive release of government information may be enhanced, and
- Creating new records under the GIPA Act – to assist agencies in responding to advances in information systems which enable the collation and provision of new information and data.

In addition, the IPC has numerous resources on informal release of information and dealing with personal information as a public interest consideration under the GIPA Act. These resources promote the responsible release of information under the well-established GIPA regime and could be expanded to confirm the exchange of personal information between agencies.

In the area of information sharing for coordinated service delivery, policy development and case management, I have advised and continue to advise the NSW Government on significant strategic initiatives that seek to improve information sharing between government agencies and with other organisations.

The IPC e-learning portal was launched in March 2015. The portal offers a streamlined approach to training for NSW privacy and information access legislation to meet the growing demand for training and education among the IPC's stakeholder groups, while assisting the Information Commissioner and Privacy Commissioner to meet their statutory obligations. At launch the portal included two e-learning modules, Access Training for Decision Makers under the GIPA Act: Module 1 and Privacy Complaints Handling under the PPIP Act.

The IPC also supports and engages with the NSW Right to Information and Privacy Practitioners' Network Forum, consisting of right to know officers in agencies. In 2014 – 2015 IPC staff delivered 13 GIPA focused training and information sessions during the year.

Supporting interagency initiatives

The Information Commissioner and IPC have been or are currently involved in the:

- *Open Government Steering Committee* – to drive the implementation of open government actions underpinned by the NSW Government’s commitment to the open government principles of transparency, participation, collaboration and innovation.
- *Data Analytics Centre Steering Committee* – to establish the whole of government data analytics centre to share agency information and enable the delivery of better services and evidence-based policy development.
- *NSW Domestic Violence Disclosure Scheme (DVDS)* – the pilot DVDS will be established to prevent domestic violence. It aims to increase the safety of people potentially at risk of domestic violence. Central to the design of the DVDS is the intention that informed disclosures are only made where appropriate to increase the safety of people potentially at risk.
- *Enabling Information Sharing Working Group* – reviewed the legislative, cultural and policy landscape to facilitate government’s secure sharing of information for better service delivery and decision making required by the ICT Strategy.
- *NSW Legislative and Policy Framework for Government Records Management Steering Committee* – examined the effectiveness and gaps in the current legislative and policy framework (including the information access regime) in a changing digital environment and new ICT sourcing models such as cloud based services and digital records management.

Working with individual agencies

Each agency faces their own challenges in improving access to information. Accordingly I regularly meet with agency heads and senior staff to discuss progress and provide assistance.

I have also recently met with a number of senior staff to ensure that my reporting on the operations of the GIPA Act is appropriate and supports agency actions, for example by benchmarking performance against their respective sector.

Directions for the future

Developing a fifth pathway of information access

In the context of information sharing between government agencies, there is an option to consider amending the GIPA Act to place beyond doubt that information can be released through exchange between agencies (as a fifth pathway to accessing information) whilst still maintaining the well established and effective system of decision making under the GIPA Act. I note that of the 359 reviews that were completed by the IPC in the 2014-2015 financial year, no recommendation was made to an agency to withhold the release of personal information. This is because personal information is only one factor that an agency can consider when deciding to release government records that contain personal information. Consultation with affected parties will assist agencies in that decision making process. This demonstrates that the GIPA regime is well adopted, respected and operationally effective as applied by government agencies. Therefore there is confidence that the potential inclusion of a fifth pathway in the GIPA Act would still result in these outcomes.

Learning from international lessons and insights

The IPC recently commissioned research from the University of Technology of Sydney (UTS) to identify global better practices in encouraging information sharing. UTS identified three “switches” to promote positive information sharing between

government agencies and overcome the behavioural and organisational issues which prevent it. The switches are:

1. to have a clear legal and policy framework to promote a model of agency sharing
2. to promote proactive release across organisational walls, and
3. to build inter-agency trust by using 'soft law' mechanisms to communicate good practice systems, provide adequate resources for training and security systems, maintain good interagency working relationships and provide clear rules of disclosure while maintaining flexibility.

These three approaches will be considered by the IPC as ways to advance information sharing approaches and address barriers to information sharing in NSW.

The Standing Committee may also wish to consider in detail recent steps taken in the United Kingdom to improve information access and management. These steps include:

- establishing the Information Commissioner's Office (ICO) to provide a single point of contact for citizens, businesses and all tiers of government. The UK ICO's role encompasses data sharing; freedom of information and privacy in administering the *Freedom of Information Act 2000* and the *Data Protection Act 1998*
- developing a statutory Data Sharing Code of Practice to ensure that access is in compliance with the application of the safeguards proscribed in the Code. Guidance is also provided by the OIC through a checklist that explains the application of the legislation including its application to personal data
- initiating the Five-Star Rating for Open Data to encourage continuous improvement by measuring the usability of published data. The five-star model of open data sets out standards to enable data to have a high level of usability so that data manipulation, linkage and analysis can be freely undertaken, and
- creating a data culture where 'Open Data Champions' were selected to set standards of open data and transparency. The initiative was established to empower citizens and communities with data to permit opportunities for innovation, economic and social growth and better public services. The champions from sixteen local and regional authorities committed to releasing open data and creating and sharing experiences to demonstrate benefits of open data². This strategy is consistent with Switch 2 identified in the UTS Report to facilitate interagency exchange.

Overall the UK model has matured in its recognition of the civic benefits of an integrated holistic approach to information management. The approach recognises government's responsibility to form a contract with citizens regarding the utilisation of data and information by governments to deliver better services; and inform policy and decision making regarding public expenditure. This approach would complement the proactive release pathways, public interest test and associated protections contained in the GIPA Act by providing a tangible and transparent commitment to responsible information sharing by government.

² Jamie Whyte, Trafford Recognised by Cabinet Office as Open Data Champions.
<http://www.infotrafford.org.uk/lab/blog/cabinet-office-open-data-champions>

Data co-ordination bodies exist in Denmark and Singapore and are under development in New Zealand. The requirement to ensure safe stewardship of information is essential to public confidence and trust in government.

Encouraging release of information

My reports to Parliament demonstrated that the formal access pathway has been operationalised and that there is a need to focus on using the other pathways to maximise information release in purposeful ways. Greater take up of other access pathways, that is, open access and authorised proactive release and informal release will help promote the capacity of the GIPA Act to inform policy development and service delivery. It would also further promote the transition that has been occurring since 2009 when the *Freedom of Information Act 1989* was replaced with the GIPA Act, that is, the shift from providing access to government information on request, to a 'push model' where government information is proactively released, considered a core strategic asset and supported by a commitment to open government.

The GIPA Act encourages the 'proactive' release of government information, and provides the public with the ability to access information held by a government agency. This approach encourages accountability and transparency in the exercise by agencies and government of powers and discretion. An additional flow-on benefit is the promotion of public confidence in the decision-making of government agencies.

Open access and informal release have advantages for agencies and applicants. In terms of open access for example, consent based proactive release of information between government agencies may be an effective mechanism to move beyond the current perceived barriers to information sharing in service provision. This approach can advance the NSW Government's intent to move to a holistic model of service delivery to the citizens of NSW whilst being respectful of privacy safeguards. It encourages accountability and transparency in the exercise by agencies and government of powers and discretion.

I have also raised that reforms that can better promote the *proactive* release of government held information are needed. This is essential in taking the next step in open government and could assist to promote greater public confidence in government decision-making. There are a number of benefits that will flow from proactive release:

- reduced costs and resourcing needs: the proactive release of information could decrease the number of access applications, leading to reduced administrative effort and costs for agencies and the community
- a better informed community: the provision of government information could raise community awareness of governments' strategic intentions and initiatives. This proactive release of information could also drive innovation and provide more competition in the market, leading to economic growth and transparency of business information
- improved and increased community participation in government processes and decision-making: the release of information could enable active community participation in government decision making and the design and delivery of services, and
- improved service delivery: this could occur through increased agency efficiency and responsiveness. Providing information to the community faster could also result in greater customer satisfaction.

Ensuring the complementarity of information access and privacy regimes

In addition, there is a complementary approach to information relation despite having different paths to access personal information under the PPIP Act, the HRIP Act and

the GIPA Act. Individuals may seek to obtain their personal information in government records using the pathways of PPIP Act and/or the HRIP Act. However, section 5 of the PPIP Act and section 22 of the HRIP Act state that nothing in those Acts will affect the operation of the GIPA Act. As such, the privacy legislation recognises the intersect with the GIPA Act which requires the decision maker to instead apply the GIPA Act to the privacy determination. This coordinated approach to information release is consistent with the establishment of a single commission for information access and privacy matters.

Clarifying the legislative framework

I acknowledge the multidimensional legislative framework that governs the management of government held information, and note that further improvements could be considered. While there are different paths to access personal information as noted in the section "The GIPA Act as an enabler of information sharing for service coordination" above, the legal framework is still complex. Differing definitions and frameworks for decision making under different pathways for access can lead to inconsistent decision making and confusion in terms of process for decision makers and the public.

The citizens of NSW would be better served if there was a cohesive legislative framework for the management of government held information. More broadly, at a strategic level, a comprehensive whole-of-government strategic information policy would facilitate the best possible outcomes for an open, accountable and participatory government. Implementation of a whole of government strategy would build on the work being done under the NSW Government ICT strategy and facilitate better policy development and service delivery which reflects citizen input and contemporary data sets whilst also maintaining access and privacy rights in a more coordinated and contemporary way. I have raised this issue in the GIPA statutory review for consideration by the Department of Justice.

Conclusion

I trust that the discussion above demonstrates how the established GIPA regime currently facilitates information release and the possible options to further improve the information access and management regime for better service coordination by considering:

- having a clear legal framework within the GIPA Act, as a fifth pathway, to permit information sharing between agencies
- having a legal obligation for institutions to comply with the GIPA Act when undertaking government services or functions, and
- a cohesive legislative framework to address the differing definitions and frameworks for decision making under the different pathways to accessing personal information.

Please do not hesitate to contact me if you have any queries. Alternatively, your officers may contact David Marcus, Manager Performance Reporting and Projects, on _____ or by email at _____

Yours sincerely

 Elizabeth Tydd

Chief Executive Officer and NSW Information Commissioner