

Policy: Access to Information, Privacy and Confidentiality

1 Purpose

To provide guidance to staff about NSW Trustee & Guardian's (NSWTG) obligations in relation to the personal, health and sensitive information it holds about its customers. This includes outlining staff's obligations in managing:

- requests from customers and members of the public to access information;
- disclosure of information about customers within NSWTG and externally.

The policy achieves this by:

- Guiding the release of information we hold.
- Providing strategies for compliance with legislation.
- Establishing procedures to eliminate or reduce the risk of non-compliance.
- Clarifying the separation of the different functions within NSWTG.

The policy also explains how NSWTG manages its privacy obligations by:

- Ensuring that the personal information we collect and use is relevant, not excessive, up to date and complete.
- Ensuring personal information is kept private and stored securely.
- Using personal information for the purpose for which it was provided.
- Not disclosing personal information to another person or organisation without the person's consent, unless permitted by law or in limited circumstances when it is in the public interest to disclose.

2 Policy statement

Requests for information from members of the public are legally enforceable under the [Government Information \(Public Access\) Act 2009](#) (GIPA Act).

This policy should be read in conjunction with the Access to Information, Privacy and Confidentiality Procedure, which provides detailed guidance on how to apply the policy and what information can be released to third parties.

2.1 NSWTG's approach to releasing information

NSWTG's approach is to release information as a matter of public interest as efficiently as possible and to comply with its obligations under the GIPA Act. [Section 12](#) of the GIPA Act states that there is a general presumption in favour of disclosure of government information. This means that NSWTG's position is to release information wherever possible, unless there is an overriding consideration against disclosure.

2.1.1 Personal information

If an individual is requesting personal information that relates only to themselves, the release of that information to that individual does not generally require a formal GIPA Act application.

2.1.2 Public interest disclosure

The GIPA Act provides a list of public interest considerations against disclosure of information under [Section 14](#). These are the only considerations against disclosure that may be considered in applying the public interest test. The public interest test is outlined in [Section 13](#), which states there is an overriding public interest against disclosure, if there are public interest considerations against disclosure, and on the balance, those considerations outweigh the public interest considerations in favour of disclosure.

[Schedule 1](#) of GIPA Act provides a list of overriding conclusive considerations against disclosure, that will be applied by the Information & Privacy Officer when processing a GIPA application.

2.2 Ways information is released

The GIPA Act provides for government information to be released in four ways.

2.2.1 Mandatory proactive release

Some documents must be proactively released by agencies. This is ‘mandatory proactive release’, and these documents are known as ‘open access information’.

They include:

- an agency information guide (AIG), describing an agency’s structure, functions, how those functions affect the public.
- documents tabled in parliament by or on behalf of an agency.
- policy documents that are related to its functions.
- a disclosure log of information released under formal access applications that may be of general public interest.
- a register of contracts an agency has with private sector entities for \$150,000 (inclusive of GST) or more.
- annual reports.

2.2.2 Authorised proactive release

NSWTG may also decide to make information publicly available even if it is not mandatory open access information. In deciding to proactively release information, it should be noted that parts of documents, which cannot be released, should be redacted, to allow the release of the rest of document.

2.2.3 Informal release

NSWTG has discretion to release information informally when requested.

'Informal release' occurs when information in response to a request is provided without a formal access application.

This means that we may agree to give out information without requiring the person requesting it to lodge a formal application under [Part 4](#) of the GIPA Act, unless there are overriding considerations against release. Informal release of information can be more efficient, flexible and timely for agencies and citizens.

2.2.4 Formal release

An applicant may often make a formal access application if an informal application has been refused.

The [formal access application form](#) is available through NSWTG's website. The application fee is \$30.00 unless a waiver or reduction is requested and approved.

2.3 Information collection and sharing

NSWTG collects information for a specific purpose, and it cannot be used for an unrelated purpose or disclosed to third parties without the consent of the person from whom it was collected, or unless disclosure is required by law, as outlined in the [Privacy and Personal Information Protection Act 1998](#) (PPIP Act).

NSWTG must always take into account the purpose for which the information was originally obtained and whether the release is justified either under the PPIP Act or the [Health Records and Information Privacy Act 2002](#) (HRIP Act), or within the context of this policy. This is to avoid any breach of confidentiality and unauthorised disclosure of personal information, even internally between different service functions (e.g. personal information of a customer held by Estate Management cannot be shared with Public Guardian without following due process).

For more information about how NSWTG collects, uses and discloses personal information, please view our [Privacy Policy](#) and the [Privacy Management Plan](#).

2.4 Managing Privacy and Personal Information

The NSW privacy law is contained in the [PPIP Act](#) and the [HRIP Act](#). These Acts set privacy rules to regulate the way agencies such as NSWTG deal with personal information, including health information. NSWTG is bound by legislation and is committed to respecting the privacy rights of employees, customers and members of the public.

2.4.1 NSWTG collects and receives customers' personal and health information in a variety of ways to perform its services and functions.

The term "personal information" should be used according to the definition in [Section 4](#) of the PPIP Act as it relates to NSWTG functions, as follows:

Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

This means personal information and records held about NSWTG customers, staff, people in the community and any other stakeholders.

2.4.2 Exclusions under the PPIP Act

The PPIP Act excludes certain types of information from the definition such as information about people who have been deceased for more than 30 years, information about a person's suitability for public sector employment and information contained in a publicly available publication.

2.4.3 Health information

"Health information" includes personal information or opinion about the physical or mental health or a disability of an individual, and is defined in full at [Section 6](#) of the HRIP Act.

2.4.4 Sensitive personal information

[Sensitive Personal Information](#) is outlined by the Information and Privacy Commission guidelines and may include for example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, sexual activities or trade union membership. Generally, sensitive information has a higher level of privacy protection than other personal information.

For more information about personal, health and sensitive information, please view our [Privacy Policy](#) and the [Privacy Management Plan](#).

3 Scope

The policy applies to all NSWTG staff when responding to an informal or formal request for information, or when publishing information, in accordance with the GIPA Act.

4 Legislative context

This policy supports adherence to the:

- [Crimes Act 1900](#)
- [Government Information \(Public Access\) Act 2009](#)
- [Guardianship Act 1987](#)
- [Health Records and Information Privacy Act 2002](#)
- [Law Enforcement \(Powers and Responsibilities\) Regulation 2016](#)
- [NSW Trustee and Guardian Act 2009](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Privacy and Personal Information Protection Regulation 2019](#)
- [State Records Act 1998](#)

4.1.1 Aim of the GIPA Act

The aim of the [GIPA Act](#) is to promote and facilitate the sharing of government information with the public in order to improve transparency and accountability.

Section 43 and Schedule 2(4) of GIPA Act excludes information held by NSWTG, which relates to its functions as trustee, executor and administrator.

4.1.2 Aim of the PIPP Act

The PPIP Act deals with how all NSW public sector agencies, including NSWTG manage personal information. It describes the legal obligations NSW government agencies must follow when they collect, store, use and disclose personal information.

In the management of a person's affairs, NSWTG may collect, store, use and disclose information to other agencies, professionals or individuals. In doing so, personal information may be sought from, and disclosed to, support services, health professionals and other agencies (e.g. Centrelink, Department of Veteran's Affairs, Department of Housing). This exchange of information is necessary to manage the agency's authorised functions.

Personal information needs to be collected lawfully and only when necessary for managing the matter or person's affairs. The information should be collected directly from the person to whom it relates where possible, unless that person has authorised collection from someone else or the person's appointed guardian.

Disclosure of information to third parties should only be to the extent necessary to achieve the particular purpose, for which it was originally collected. When information is disclosed, it should be in line with relevant procedures and refrain from providing in excess of that required.

Particular care must be taken with the following when disclosing information:

- health information should only be disclosed if it is required by law.
- sensitive personal information on ethnicity, race, political opinions, religious or philosophical beliefs, trade union membership or sexual activities should not be disclosed except to prevent an imminent threat to life or health.
- personal information and/or health information proposed for disclosure to a person or body outside of NSW, as they may not be bound to meet privacy requirements under any corresponding law or by a binding individual agreement.

5 NSWTG functions

NSWTG has multiple functions and it is important to retain the distinction between the separate functions when considering whether to disclose personal information. Staff with access to information from NSWTG's role as executor/trustee, guardian or estate manager, need to remain aware of the purpose for which the information was originally obtained.

6 Related resources

Type	References
Policies and Procedures	<u>Access to Information Privacy and Confidentiality Procedure</u> <u>Issuing of Client Transaction Statements Policy and Procedures</u> <u>Managing Privacy Breach Process Guide</u> <u>Media Management Policy</u>

Type	References
	<u>NSWTG Privacy Policy</u> <u>NSWTG Agency Information Guide</u> <u>Privacy Management Plan</u>
Other Resources	<u>NSWTG GIPA Act Application Form</u> <u>Office of Information and Privacy Commissioner</u> <u>State Records – Register of Access Directions</u>

7 Definitions

GIPA Act means [Government Information \(Public Access\) Act 2009](#).

Health information means information about physical or mental health or a disability of an individual, or an individual's express wishes about the future or current provision of health services.

HRIP Act means [Health Records and Information Privacy Act 2002](#).

Information means government information contained in a record held by NSW Trustee & Guardian.

NSWTG means NSW Trustee & Guardian.

Personal Information refers to any information that relates to an identifiable person.

PPIP Act means [Privacy and Personal Information Protection Act 1998](#).

Record means any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means.

Staff means employees and agency staff of NSW Trustee & Guardian.

Document information

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Document history

Version	Date	Reason for amendment	Name/s
1.0	28/06/2019	Combined Information Sharing Policy and Procedures, Access to Information Procedures, Privacy and Confidentiality Procedures, and Trustee Disclosure Procedures	Cheree Offner, Joan O'Dwyer, Simon Pendergast
2.0	22/5/2023	Update and inclusion of new definitions, and document reformatting	Cheree Offner, Hannah Muruste
3.0	30/5/2023	Update links, internal documents and websites	Cheree Offner, Hannah Muruste