

Policy: Access to Information, Privacy and Confidentiality

Purpose

- Guide the disclosure of personal information internally between functions and externally to third parties.
- Guide the release of information to individuals.
- Provide strategies for compliance.
- Establish procedures to eliminate or reduce the risk of non-compliance.
- Clarify the separation of the different functions within NSW Trustee & Guardian.

Policy statement

1 Public access to information

The aim of [Government Information \(Public Access\) Act 2009 \(GIPAA\)](#) 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 GIPAA exclude information held by NSW Trustee & Guardian, which relates to its functions as trustee, executor and administrator.

1.1 NSW Trustee & Guardian's approach to releasing information

NSW Trustee & Guardian's approach is to comply fully with GIPAA and release information as a matter of public interest as efficiently as possible. **There is a presumption in favour of disclosure of government information.** This means that NSW Trustee & Guardian's default position is to release information.

This presumption is counterbalanced by considerations against disclosure.

The release of personal information to the individual does not require a GIPAA application.

1.1.1 Considerations against Release (non-conclusive)

GIPAA provides a list of public interest considerations against disclosure under [section 14](#). These are the **only** considerations against disclosure that may be considered in applying the public interest test. They are not conclusive overriding considerations.

1.1.2 Overriding considerations against Release (conclusive)

[Schedule 1](#) of GIPAA gives a list of overriding conclusive considerations against disclosure.

The categories are:

- secrecy laws
- cabinet information
- executive council information
- information, the release of which, could be considered contempt of court
- legal professional privilege
- excluded information of another agency (**Note: Trustee information is excluded under this section**)
- documents affecting public safety and law enforcement
- ensuring transport safety
- matters relating to the adoption of children
- matters relating to the care and protection of children
- ministerial register of interests
- protecting aboriginal and environmental heritage
- information about complaints to a judicial commission

1.2 Ways information is released

GIPAA provides for government information to be released in four ways.

1.2.1 Mandatory proactive release

Agencies **must** proactively release some documents. This is 'mandatory proactive release', and these documents are known as 'open access information'.

They include:

- policy documents
- publication/information guide
- disclosure log of access applications
- register of NSW Trustee & Guardian's government contracts
- annual reports
- information contained in documents tabled in Parliament by/for NSW Trustee & Guardian
- record of open access information not made public based on overriding interest against disclosure

1.2.2 Authorised proactive release

NSW Trustee & Guardian 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, might be omitted/blacked out, to allow the release of the rest of document.

1.2.3 Informal release

NSW Trustee & Guardian has discretion to release information informally when requested. This means that we may agree to give out information without requiring the person requesting it to lodge a formal application, unless there are [overriding considerations against release](#).

1.2.4 Formal access application

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

The [formal access application form](#) is available through NSW Trustee & Guardian's website. The application fee is \$30.00, unless a waiver or reduction is requested.

2 Information sharing

NSW Trustee & Guardian 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.

NSW Trustee & Guardian must always take into account the purpose for which the information was originally obtained and whether the release is justified either under the [Privacy and Personal Information Protection Act 1998](#) (PPIP Act) or within the context of this Policy. This is to avoid confidentiality issues and unauthorised disclosure of personal information, even internally between different functions (e.g. NSW Trustee & Guardian financial management, guardianship and trustee services).

3 Privacy

NSW Trustee & Guardian:

- must ensure that the personal information it collects and uses is relevant, not excessive, up to date and complete
- must ensure personal information is kept private. This means that only certain people within NSW Trustee & Guardian can have access to that information and that it can only be passed on to other people or organisations in restricted circumstances
- ensures that all personal information is stored securely
- must use your personal information for the purpose for which it was provided
- may not disclose personal information to another person or organisation without the person's consent unless permitted by law or it is in the public's interest to disclose that information.

The NSW privacy law is contained in the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#). The legislation sets privacy standards to regulate the way agencies such as NSW Trustee & Guardian deal with personal information, including health information. NSW Trustee & Guardian is bound by this legislation and is committed to respecting the privacy rights of employees, customers and members of the public. More information about our [Privacy Policy](#) is available on our website.

Scope

All NSW Trustee & Guardian staff.

Legislative context

- [Government Information \(Public Access\) Act 2009 \(GIPAA\)](#)
- [Health Records and Information Privacy Act 2002](#)
- [Privacy and Personal Information Protection Act 1998](#)

Related resources

[Formal access application form](#)

[Privacy Policy](#)

[Agency Information Guide](#)

Document information

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Approver:	Director, Strategy & Governance
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