



## GIPA Act fees and charges

## fact sheet

August 2010

The *Government Information (Public Access) Act 2009* (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, and
- 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.

Consistent with this object, Parliament intends that the GIPA Act be interpreted so as to facilitate access to government information promptly, and at the lowest reasonable cost (see GIPA Act section 3).

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. This brochure clarifies the circumstances in which fees and charges for access to information may be levied, reduced, waived or refunded under the GIPA Act. There is also a table at the end summarising the applicable fees and charges.

### Open access information

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:

- a publication 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, and
- a record of the open access information that is not made public due to an overriding public interest against disclosure (section 18).

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Clause 5 of the GIPA Regulations 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
- 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 (see Schedule 1).

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. Local councils must also make the information available for inspection and copying at council offices.

Agencies may charge for open access information **only** if it is available for free in at least one other format. Clause 4(1)(b) of the Regulations provides that local councils may impose copying charges "not exceeding the reasonable cost of photocopying".

### Authorised proactive release of information

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 (section 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 a formal 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 and 7 of the GIPA Act. However, where other information is released in response to an informal request, there is no authority in section 8 of the GIPA Act to impose charges.

See the *Informal release of information* knowledge update under 'for agencies' on the OIC website for further guidance about informal release of information.

### Formal access applications

The provisions of the GIPA Act dealing with formal access applications contain the most detail with regard to fees and charges. The GIPA Act enables agencies to charge an application fee, and 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 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 a formal access application for government information (section 41). The application is invalid until this fee is paid. If the application is transferred to another agency, the fee is payable to the original agency only, and not to the transfer agency (section 48).

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

- the application is amended or withdrawn (see sections 49 & 50)
- the agency refuses to deal with the application (section 60(6)), unless it is a deemed refusal because the application was not decided within the specified time frame (see below), or
- the applicant fails to pay any advance deposit requested by the due date (section 68(3)(d)).

An agency must refund an application fee if:

- the agency has not decided the application within the specified time, known as a "deemed refusal" (section 63). or
- the application is invalid for a reason other than failure to pay the application fee (section 52(5)).

There is no entitlement under the GIPA Act for an application fee to be waived or reduced. However, agencies may exercise the general discretion in section 127 in any situation where they consider a waiver or reduction to be appropriate.

### 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 (see section 64). The \$30 application fee also counts towards the first hour of processing (see section 64(3)). 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 (section 62). Access to the information may be made conditional on the payment of the processing charge (section 64(4)).

An agency cannot impose processing charges where:

- the application is transferred to another agency (section 48), or
- it does not decide the application in time, even if a late decision is made (section 63).

### Advance deposit

An applicant may be asked to pay an advance deposit of up to 50% of the estimated processing charge (section 69). Under section 68, the notice requiring an advance deposit must:

- (c) include a statement of the processing charges for work already undertaken by the agency in dealing with the application, and
- (d) include a statement of the estimated processing charges for work expected to be required to be undertaken by the agency in dealing with the application, and
- (e) specify a date by which the advance deposit must be paid (being a date at least 4 weeks after the date the notice is given), and

- (f) 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.

The applicant is entitled to a refund of any overpayment (section 71), but is not entitled to have the deposit refunded if the application is withdrawn (section 60).

The period within which an agency must decide an application freezes from when the decision to require a deposit is made until the deposit is paid.

#### Example 1

Agency A writes to Applicant X on 26 July 2010 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
<b>TOTAL</b>	<b>\$900</b>

*Before proceeding any further with your request, we require a deposit of \$450, being 50% of the estimated cost, to be paid on or before 27 August 2010. 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 (section 67).

#### Example 2

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
<b>TOTAL</b>	<b>\$300</b>

#### Financial hardship

Section 65 states that applicants are entitled to a 50% 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 2 hours of processing time, not just the first hour as would normally be the case.

This provision is supplemented by clause 9 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 non-profit organisation).

These are the circumstances in which an agency must reduce the processing charges. Agencies may choose to waive, reduce or refund the fees and charges in other circumstances using the general discretion in section 127.

#### Example 3

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

Application fee and 1st 2 hours of processing:	\$30
Next 20 hours @ \$0/hr	\$0
Next 8 hours @ \$30/hr	\$240
<b>SUB TOTAL</b>	<b>\$270</b>
Less 50% discount	\$135
<b>TOTAL</b>	<b>\$135</b>

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

#### Special benefit to the public generally

Applicants are entitled to a 50% reduction in processing charges if the agency is satisfied that the information applied for is of special benefit to the public generally (section 66). The 50% 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 3 working days after, the applicant is granted access, the applicant is entitled to a *full waiver* of the processing charges (section 66(2)).

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. The Information Commissioner can assist agencies to exercise that discretion by releasing guidance material on how section 66 may be interpreted.

## Review of decisions on access applications

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 Administrative Decisions Tribunal (ADT). 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 (section 85). This fee is also payable where an internal review is recommended by the Information Commissioner under section 93(6). The fee is refundable if the agency does not conduct the review within the specified time frame (section 86). No processing charges are payable for internal reviews (section 87).

### External review

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

For review by the ADT, a \$68 filing fee applies. For further details, please refer to the ADT website: <http://www.lawlink.nsw.gov.au/adt>

## Where can I get more information about right to information?

- Go to [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)
- Email [oiinfo@oic.nsw.gov.au](mailto:oiinfo@oic.nsw.gov.au)
- Mail GPO Box 7011, Sydney NSW 2001
- Visit Level 11, 1 Castlereagh Street, Sydney NSW 2000
- Call 1800 INFOCOM (1800 463 626) between 9am to 5pm, Monday to Friday (excluding public holidays).

		Application fee	Other charges	When must fees be refunded?	When must other charges be reduced?	When can fees and charges be waived, reduced or refunded?
<b>Open access information</b>		No	Yes. Charges may apply, provided one method of access is free (s 6).  Local councils may impose reasonable photocopying charges (GIPA Regulations cl 4(1)(b)).	N/A	N/A	Agencies have a general discretion to waive, reduce or refund any fee or charge that may be imposed under the GIPA Act where they consider it to be appropriate (s 127).
<b>Information released proactively</b>		No	Yes. May be made available at the lowest reasonable cost to the agency (s 7).	N/A	N/A	
<b>Information released informally upon request</b>		No	No	N/A	N/A	
<b>Formal access applications</b>	<b>Personal information</b>	Yes - \$30 fee (includes first hour of processing - (s 64(3))).	Yes. First 20 hours free, then processing charges of \$30/hour (s 67).	Application fee must be refunded if: <ul style="list-style-type: none"> <li>the agency does not deal with the application in time (s 63(1)); or</li> <li>the application is invalid (s 52(5)).</li> </ul>	Processing charges must be discounted by 50% where: <ul style="list-style-type: none"> <li>the applicant can show financial hardship (by producing evidence that they hold a Pensioner Concession card, are a full-time student, or a non-profit organisation - s 65 and the GIPA regulations cl 9); or</li> <li>where the information applied for is of special benefit to the public generally (s 66).</li> <li>In the latter case, the applicant is entitled to a full waiver of the charges if the information is publicly released before or within 3 working days after being given to the applicant.</li> </ul>	
	<b>Other information</b>		Yes. Processing charges of \$30/hour (s 64).			
<b>Review</b>	<b>Internal review by agency</b>	Yes - \$40, unless review of a deemed refusal (s 85).	No	If agency does not decide the review within the specified period (s 86).	N/A	
	<b>External review by Information Commissioner</b>	No	No	N/A	N/A	
	<b>External review by ADT</b>	Yes - \$68	No		If applicant can show financial hardship	