

Government Information (Public Access) Regulation 2009 (2010 SI 343)

[2010-343]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Contract Cleaning Industry \(Portable Long Service Leave Scheme\) Act 2010 No 122](#) (not commenced — to commence on 1.7.2011)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Government Information (Public Access) Regulation 2009 (2010 SI 343)



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Government Information (Public Access) Regulation 2009*.

2 Definitions

(1) In this Regulation:

LGA means the *Local Government Act 1993*.

the Act means the *Government Information (Public Access) Act 2009*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Open access information of local authorities

3 Additional open access information

The government information listed in Schedule 1 that is held by a local authority is prescribed as open access information of the local authority.

Note—

The fact that information is open access information does not create an obligation to keep records indefinitely and does not interfere with records management practices and procedures of local authorities that are consistent with the *State Records Act 1998*.

4 Additional ways in which open access information is to be made available

(1) A local authority must make its open access information publicly available by:

(a) making the information available for inspection free of charge by any person at the office of the local authority during ordinary office hours, and

(b) providing a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.

- (2) This clause does not prevent a local authority from archiving records that contain open access information in accordance with the authority's records management practices and procedures. The authority is required to retrieve archived records and make the information available in accordance with this clause in response to a request for access as soon as reasonably practicable after the request is made.
- (3) This clause extends to open access information of a local authority that is open access information listed in section 18 of the Act (and is not limited to information listed in Schedule 1).

Part 3 Provisions relating to agencies generally

5 Additional open access information of certain agencies

- (1) **Ministers** For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a Minister:
 - (a) any media release issued by the Minister,
 - (b) details (including the costs and purpose) of any overseas travel undertaken by the Minister.
- (2) **Government departments** For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a Government Department:
 - (a) a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year,
 - (b) the total number and total value of properties disposed of by the Department during the previous financial year,
 - (c) the Department's guarantee of service (if any),
 - (d) the Department's code of conduct (if any).
- (3) The reference in subclause (2) to a Government Department includes a reference to a public authority that is a Department within the meaning of the *Annual Reports (Departments) Act 1985*.
- (4) **Statutory bodies** For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a public authority that is a statutory body within the meaning of the *Annual Reports (Statutory Bodies) Act 1984*:
 - (a) the total number and total value of properties disposed of by the statutory body during the previous financial year,
 - (b) the statutory body's guarantee of service (if any).

6 Extension of decision period for access applications involving schools

The decision period under section 57 of the Act is:

- (a) in the case of an access application that involves a school, and
- (b) if any part of the decision period occurs when the school is closed for school holidays, extended by the number of working days occurring in that school holiday period after the application is received.

7 Annual reporting requirements under section 125 of Act

The annual report of an agency (other than a Minister) required to be prepared under section 125 of the Act must include the following:

Note—

An agency's report under section 125 of the Act can be included in the agency's annual report required to be prepared under the annual reporting legislation—see section 6 of the [Annual Reports \(Departments\) Act 1985](#) or section 5A of the [Annual Reports \(Statutory Bodies\) Act 1984](#) (as the case requires).

- (a) details of the review carried out by the agency under section 7 (3) of the Act during the reporting year and the details of any information made publicly available by the agency as a result of the review,
- (b) the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications),
- (c) the total number of access applications received by the agency during the reporting year that the agency refused, either wholly or partly, because the application was for the disclosure of information referred to in Schedule 1 to the Act (Information for which there is conclusive presumption of overriding public interest against disclosure),

Note—

Table D in Schedule 2 also requires information relating to access applications in respect of which there is a conclusive presumption of overriding public interest against disclosure.

- (d) information, as set out in the form required by the tables in Schedule 2, relating to the access applications (if any) made to the agency during the reporting year.

8 Public availability of open access information of Ministers

The open access information of a Minister may, without limiting section 6 of the Act, be made publicly available on a website maintained by a Government Department for which the Minister is responsible.

9 Discounted processing charge

An agency is required to reduce, by 50%, the processing charge payable under the Act for dealing with an access application if the applicant provides evidence that the applicant:

- (a) is the holder of a Pensioner Concession card issued by the Commonwealth that is in force, or
- (b) is a full-time student, or
- (c) is a non-profit organisation (including a person applying for or on behalf of a non-profit organisation).

Part 4 Miscellaneous

10 Exempt documents under interstate FOI legislation—corresponding laws

The following laws are prescribed as corresponding laws for the purposes of clause 7 of the Table to section 14 of the Act:

- (a) *Freedom of Information Act 1982* of Victoria,
- (b) *Right to Information Act 2009* of Queensland,
- (c) *Freedom of Information Act 1989* of the Australian Capital Territory,
- (d) *Freedom of Information Act 1992* of Western Australia,
- (e) *Right to Information Act 2009* of Tasmania,
- (f) *Freedom of Information Act 1991* of South Australia,
- (g) *Information Act* of the Northern Territory.

11 Bodies declared to be public authorities

For the purposes of clause 2 (2) (b) of Schedule 4 to the Act, each of the following bodies is declared to be a public authority:

- (a) NSW Adult Migrant English Service,
- (b) Australian Music Examinations Board NSW,
- (c) Duke of Edinburgh Award Scheme (NSW State Committee),
- (d) Regional Development Australia.

12 Agencies that are part of other agencies

For the purposes of clause 6 of Schedule 4 to the Act, each agency referred to in Schedule 3 to this Regulation (the **subsidiary agency**) is declared not to be a separate agency but is taken to be part of and included in the agency (the **parent agency**) specified in that Schedule in respect of the subsidiary agency.

13 Records in certain agencies

For the purposes of clause 13 (1) (e) of Schedule 4 to the Act, the following agencies are prescribed:

- (a) Audit Office,
- (b) Ombudsman's Office.

14 Savings and transitional provisions

- (1) **FOI Act annual reports due for 2010** Section 68 of the FOI Act continues to apply (as if it had not been repealed) to and in respect of any report that would, but for that repeal, have been required to be prepared at any time during 2010.
- (2) **Publication of information concerning affairs of agencies under FOI Act** Despite the repeal of section 14 of the FOI Act, the requirement under that section to publish a statement of the affairs of an agency, or an up-to-date summary of those affairs, that was due by 30 June 2010 is, if that statement or summary was not published on or before that date, extended until 30 July 2010. However, any such statement or summary is not required to be published if the agency adopts its publication guide under section 20 of the Act before 30 July 2010.
- (3) In this clause:

FOI Act means the *Freedom of Information Act 1989* as in force immediately before its repeal.

Schedule 1 Additional open access information—local authorities

(Clause 3)

1 Information about local authority

- (1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
 - (a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - (b) code of meeting practice,
 - (c) annual report,
 - (d) annual financial reports,
 - (e) auditor's report,
 - (f) management plan,

- (g) EEO management plan,
 - (h) policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
 - (i) annual reports of bodies exercising functions delegated by the local authority,
 - (j) any codes referred to in the LGA.
- (2) Information contained in the following records (whenever created) is prescribed as open access information:
- (a) returns of the interests of councillors, designated persons and delegates,
 - (b) agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
 - (c) minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
 - (d) Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.
- (3) Information contained in the current version of the following records is prescribed as open access information:
- (a) land register,
 - (b) register of investments,
 - (c) register of delegations,
 - (d) register of graffiti removal work kept in accordance with section 13 of the [Graffiti Control Act 2008](#),
 - (e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
 - (f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

2 Plans and policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- (a) local policies adopted by the local authority concerning approvals and orders,

- (b) plans of management for community land,
- (c) environmental planning instruments, development control plans and contributions plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the local authority's area.

3 Information about development applications

- (1) Information contained in the following records (whenever created) is prescribed as open access information:
 - (a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:
 - (i) home warranty insurance documents,
 - (ii) construction certificates,
 - (iii) occupation certificates,
 - (iv) structural certification documents,
 - (v) town planner reports,
 - (vi) submissions received on development applications,
 - (vii) heritage consultant reports,
 - (viii) tree inspection consultant reports,
 - (ix) acoustics consultant reports,
 - (x) land contamination consultant reports,
 - (b) records of decisions on development applications (including decisions made on appeal),
 - (c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).
- (2) This clause does not apply to so much of the information referred to in subclause (1)
 - (a) as consists of:
 - (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

(3) A local authority must keep the record referred to in subclause (1) (c).

4 Approvals, orders and other documents

Information contained in the following records (whenever created) is prescribed as open access information:

- (a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- (b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- (c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- (d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- (e) orders given under the authority of any other Act,
- (f) records of building certificates under the *Environmental Planning and Assessment Act 1979*,
- (g) plans of land proposed to be compulsorily acquired by the local authority,
- (h) compulsory acquisition notices,
- (i) leases and licences for use of public land classified as community land.

Schedule 2 Statistical information about access applications to be included in annual report

(Clause 7)

Table A: Number of applications by type of applicant and outcome*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media								
Members of Parliament								
Private sector business								

Not for profit organisations or community groups

Members of the public (application by legal representative)

Members of the public (other)

* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.

Table B: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*								
Access applications (other than personal information applications)								
Access applications that are partly personal information applications and partly other								

* A **personal information application** is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

Table C: Invalid applications

Reason for invalidity	No of applications
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Application does not comply with formal requirements (section 41 of the Act)

Application is for excluded information of the agency (section 43 of the Act)

Application contravenes restraint order (section 110 of the Act)

Total number of invalid applications received

Invalid applications that subsequently became valid applications

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	Number of times consideration used*
Overriding secrecy laws	
Cabinet information	
Executive Council information	
Contempt	
Legal professional privilege	
Excluded information	
Documents affecting law enforcement and public safety	
Transport safety	
Adoption	
Care and protection of children	
Ministerial code of conduct	
Aboriginal and environmental heritage	

* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act

	Number of occasions when application not successful
Responsible and effective government	
Law enforcement and security	
Individual rights, judicial processes and natural justice	
Business interests of agencies and other persons	

Environment, culture, economy and general matters

Secrecy provisions

Exempt documents under interstate Freedom of Information legislation

Table F: Timeliness

Number of applications

Decided within the statutory timeframe (20 days plus any extensions)

Decided after 35 days (by agreement with applicant)

Not decided within time (deemed refusal)

Total

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review			
Review by Information Commissioner*			
Internal review following recommendation under section 93 of Act			
Review by ADT			
Total			

* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

Table H: Applications for review under Part 5 of the Act (by type of applicant)

Number of applications for review

Applications by access applicants

Applications by persons to whom information the subject of access application relates (see section 54 of the Act)

Schedule 3 Agencies declared to be part of other agencies

(Clause 12)

Subsidiary agency

Parent agency

Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal	Department of Human Services
Administrative Decisions Tribunal	Department of Justice and Attorney General
Advisory committee or consultation forum established under the <i>Protection of the Environment Administration Act 1991</i>	Department of Environment, Climate Change and Water
Advisory committee established under the <i>Food Act 2003</i>	Department of Industry and Investment
Advisory committee established under the <i>National Parks and Wildlife Act 1974</i>	Department of Environment, Climate Change and Water
Advisory committee established under the <i>Noxious Weeds Act 1993</i>	Department of Industry and Investment
Agricultural industry services committee constituted by the <i>Agricultural Industry Services Act 1998</i>	Department of Industry and Investment
Animal Research Review Panel	Department of Industry and Investment
Anti-Discrimination Board	Department of Justice and Attorney General
Australian Music Examinations Board NSW	Office of the Board of Studies
Biological Control Authority	Department of Industry and Investment
Biological Diversity Advisory Council	Department of Environment, Climate Change and Water
Board of the Environment Protection Authority	Department of Environment, Climate Change and Water
Board of Surveying and Spatial Information	Land and Property Management Authority
Board of Vocational Education and Training	Department of Education and Training
Bookmakers Revision Committee	Communities NSW
Botany Cemetery Trust	Land and Property Management Authority
Building and Construction Industry Long Service Payments Committee	Building and Construction Industry Long Service Payments Corporation
Bush Fire Co-ordinating Committee	Department of Rural Fire Service
Casino, Liquor and Gaming Control Authority	Communities NSW
Charity Referee appointed under the <i>Dormant Funds Act 1942</i>	Department of Justice and Attorney General
Children's Court	Department of Justice and Attorney General
Children's Court Advisory Committee	Department of Justice and Attorney General
Children's Court Clinic	Department of Justice and Attorney General
Chipping Norton Lake Authority	Land and Property Management Authority

Chiropractic Care Assessment Committee	Department of Health
Chiropractors Registration Board	Department of Health
Chiropractors Tribunal	Department of Health
Coal Competence Board	Department of Industry and Investment
Combat Sports Authority	Communities NSW
Commissioner of the Land and Environment Court	Department of Justice and Attorney General
Committee of inquiry established under the <i>Energy and Utilities Administration Act 1987</i>	Department of Industry and Investment
Committee of Review appointed under the <i>Health Services Act 1997</i>	Department of Health
Consumer, Trader and Tenancy Tribunal	Department of Services, Technology and Administration
Contract of Carriage Tribunal	Department of Justice and Attorney General
Co-operatives Council constituted under the <i>Co-operatives Act 1992</i>	Department of Services, Technology and Administration
Costs assessor appointed under the <i>Legal Profession Act 2004</i>	Department of Justice and Attorney General
Dental Technicians Registration Board	Department of Health
Director of Equal Opportunity in Public Employment	Department of Premier and Cabinet
Disability Council under the <i>Community Welfare Act 1987</i>	Department of Human Services
District Court	Department of Justice and Attorney General
Drug Court	Department of Justice and Attorney General
Duke of Edinburgh Award Scheme (NSW State Committee)	Communities NSW
Dust Diseases Tribunal	Department of Justice and Attorney General
Electrical Equipment Safety Advisory Committee	Department of Services, Technology and Administration
Energy Corporation	Department of Industry and Investment
Environmental Trust	Department of Environment, Climate Change and Water
Exhibited Animals Advisory Committee	Department of Industry and Investment
Fair Trading Advisory Council	Department of Services, Technology and Administration
Farrer Memorial Trust	Department of Industry and Investment
Festival Development Corporation	Land and Property Management Authority
Financial Counselling Trust Fund	Department of Services, Technology and Administration

Fluoridation of Public Water Supplies Advisory Committee	Department of Health
Forestry Commission of New South Wales (also known as Forests NSW)	Department of Industry and Investment
Geographical Names Board	Land and Property Management Authority
Guardianship Tribunal	Department of Human Services
Hardship Review Board constituted under the Taxation Administration Act 1996	The Treasury
Hazardous Chemicals Advisory Committee	Department of Environment, Climate Change and Water
Health Administration Corporation	Department of Health
Heritage Council	Department of Planning
Home Building Advisory Council	Department of Services, Technology and Administration
Hunter Development Corporation	Land and Property Management Authority
Industrial Committee established under the Industrial Relations Act 1996	Department of Justice and Attorney General
Industrial Registrar	Department of Justice and Attorney General
Industrial Relations Commission	Department of Justice and Attorney General
Lake Illawarra Authority	Land and Property Management Authority
Land and Environment Court	Department of Justice and Attorney General
Land and Housing Corporation	Department of Human Services
Law Reform Commission	Department of Justice and Attorney General
Legal Profession Admission Board	Department of Justice and Attorney General
Legal Services Commissioner	Department of Justice and Attorney General
Library Council	Communities NSW
Local Court	Department of Justice and Attorney General
Local Government Boundaries Commission	Department of Premier and Cabinet
Local Government Grants Commission	Department of Premier and Cabinet
Local Government Remuneration Tribunal	Department of Premier and Cabinet
Local Government Pecuniary Interest and Disciplinary Tribunal	Department of Premier and Cabinet
Local land board under the Crown Lands Act 1989	Land and Property Management Authority
Medical Committee constituted under the Poisons and Therapeutic Goods Act 1966	Department of Health

Medical Services Committee established under the Health Administration Act 1982	Department of Health
Mental Health Review Tribunal	Department of Health
Metalliferous Mines and Extractive Industries Competence Board	Department of Industry and Investment
Mine Subsidence Board	Department of Industry and Investment
Ministerial Corporation for Industry	Department of Industry and Investment
Ministerial Review Panel appointed under section 35 of the Heritage Act 1977	Department of Planning
Motor Vehicle Industry Advisory Council	Department of Services, Technology and Administration
National Parks and Wildlife Advisory Council	Department of Environment, Climate Change and Water
New South Wales Council on Environmental Education	Department of Environment, Climate Change and Water
New South Wales Film and Television Office (also known as Screen NSW)	Department of Industry and Investment
New South Wales Innovation Council	Department of Industry and Investment
Non-Indigenous Animals Advisory Committee	Department of Industry and Investment
NSW Food Authority	Department of Industry and Investment
Nurses and Midwives Board	Department of Health
Nurses and Midwives Tribunal	Department of Health
Office of the NSW Food Authority	Department of Industry and Investment
Optical Dispensers Licensing Board	Department of Health
Optometrists Registration Board	Department of Health
Osteopaths Registration Board	Department of Health
Osteopaths Tribunal	Department of Health
Parliamentary Remuneration Tribunal	Department of Premier and Cabinet
Physiotherapists Registration Board	Department of Health
Physiotherapy Standards Advisory Committee	Department of Health
Planning administrator appointed under section 118 of the Environmental Planning and Assessment Act 1979	The local authority that the planning administrator was appointed to exercise functions of
Planning assessment panel appointed under section 118 of the Environmental Planning and Assessment Act 1979	The local authority that the planning assessment panel was appointed to exercise functions of
Podiatrists Registration Board	Department of Health

Poisons Advisory Committee	Department of Health
Pool Fencing Advisory Committee	Department of Premier and Cabinet
Privacy Commissioner	Department of Justice and Attorney General
Products Safety Committee	Department of Services, Technology and Administration
Professional Standards Committee under the Nurses and Midwives Act 1991	Department of Health
Professional Standards Council	Department of Justice and Attorney General
Property Services Advisory Council	Department of Services, Technology and Administration
Psychological Care Assessment Committee	Department of Health
Psychologists Registration Board	Department of Health
Radiation Advisory Council	Department of Environment, Climate Change and Water
Registrar under the Aboriginal Land Rights Act 1983	Department of Human Services
Reserve trust established under the Crown Lands Act 1989	Land and Property Management Authority
Review Panel established under the Gas Supply Act 1996	Department of Industry and Investment
Riverina Citrus	Department of Industry and Investment
Roads and Traffic Advisory Council	Roads and Traffic Authority
Rural Assistance Authority	Department of Industry and Investment
Rural Fire Service Advisory Council	Department of Rural Fire Service
Sentencing Council	Department of Justice and Attorney General
Serious Offenders Review Council	Department of Justice and Attorney General
Small Business Development Corporation	Department of Industry and Investment
Sporting Injuries Committee	Compensation Authorities Staff Division
State Aviation Working Group	Transport NSW
State Debt Recovery Office	The Treasury
State Parole Authority	Department of Justice and Attorney General
Statutory and Other Offices Remuneration Tribunal	Department of Premier and Cabinet
Supreme Court	Department of Justice and Attorney General
The Stewart House Preventorium, Curl Curl	Department of Education and Training
Teacher Housing Authority	Department of Services, Technology and Administration Training

Tourism New South Wales	Department of Industry and Investment
Trustees of Anzac Memorial Building	Department of Premier and Cabinet
Trust established in respect of a common under the Commons Management Act 1989	Land and Property Management Authority
Trustees of the Parliamentary Contributory Superannuation Fund	The Treasury
Trustees of the West Scholarship Scheme	Department of Education and Training
Victims Advisory Board	Department of Justice and Attorney General
Victims Compensation Fund Corporation	Department of Justice and Attorney General
Victims Compensation Tribunal	Department of Justice and Attorney General
Vocational Education and Training Accreditation Board	Department of Education and Training
Vocational Training Tribunal	Department of Education and Training
Wagga Wagga Interim Joint Planning Panel constituted under section 23G of the Environmental Planning and Assessment Act 1979	Wagga Wagga City Council
Wild Dog Destruction Board	Land and Property Management Authority
Workers Compensation and Workplace Occupational Health and Safety Council	Compensation Authorities Staff Division
Workers Compensation Commission	Compensation Authorities Staff Division
Workers Compensation (Dust Diseases) Board	Compensation Authorities Staff Division