

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

[2010-343]



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Provisions in force

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

Notes-

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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)



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

- (1) The government information listed in Schedule 1 that is held by a local authority is prescribed as open access information of the local authority.
- (2) An advertising compliance certificate issued by the head of a Government agency under the *Government Advertising Act 2011* is prescribed as open access information of that agency.

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.

11A Declaration of Service NSW as government agency

For the purposes of clause 5 (1) of Schedule 4 to the Act, the Service NSW Division of the Government Service is declared to be an agency.

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.
- (j) performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.

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*

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)

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

Access Access Access Information Refuse to granted granted refused not held available application	confirm/ deny Application whether withdrawn information is held
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Refuse to

Personal information applications*

^{*} 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.

Access applications (other than personal information applications)

Access applications that are partly personal information applications and partly other

Table C: Invalid applications

Reason for invalidity

No of applications

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

^{*} 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).

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	Decision	Total
varied	upheld	iotai

Internal review

Review by Information Commissioner*

Internal review following recommendation under section 93 of Act

Review by ADT

Total

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</i> Act 2003	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</i> Act 1998	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

^{*} 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.

Board of Surveying and Spatial Information Land and Property Management Authority

Bookmakers Revision Committee Communities NSW

Botany Cemetery Trust Land and Property Management Authority

Building and Construction Industry Long Service

Payments Committee

Long Service Corporation

Building Insurers' Guarantee Corporation Department of Services, Technology and Administration

Bush Fire Co-ordinating Committee Department of Rural Fire Service

Casino, Liquor and Gaming Control Authority Communities NSW

Charity Referee appointed under the *Dormant*

Funds Act 1942

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 *Energy*

and Utilities Administration Act 1987

Department of Industry and Investment

Committee of Review appointed under the Health

Services Act 1997

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 Co-

operatives Act 1992

Department of Services, Technology and Administration

Costs assessor appointed under the Legal

Profession Act 2004

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 Community Welfare

Act 1987

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 Administration Corporation Department of Services, Technology and Administration

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

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

Motor Vehicle Repair Industry Authority 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 Government Telecommunications

Authority (also known as TELCO)

Department of Services, Technology and Administration

New South Wales Innovation Council Department of Industry and Investment

Non-Indigenous Animals Advisory Committee Department of Industry and Investment

NSW Adult Migrant English Service Department of Education and Communities

NSW Food Authority Department of Industry and Investment

NSW Skills Board Department of Education and Communities

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

Rental Bond Board Department of Services, Technology and Administration

Reserve trust established under the Crown Lands

Act 1989

Land and Property Management Authority

Retirement Villages Advisory Council

Department of Services, Technology and Administration

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

NSW Procurement Board Department of Services, Technology and Administration

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