

Government Information (Public Access) Regulation 2018

[2018-510]



New South Wales

Status Information

Currency of version

Historical version for 2 July 2021 to 29 September 2022 (accessed 24 November 2024 at 9:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

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](#).

File last modified 2 July 2021

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Government Information (Public Access) Regulation 2018



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Government Information (Public Access) Regulation 2018*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note—

This Regulation repeals and replaces the *Government Information (Public Access) Regulation 2009*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

LGA means the *Local Government Act 1993*.

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

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

Part 2 Open access information of local authorities

4 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*.

5 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

6 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) the following details concerning overseas travel undertaken by the Minister—
 - (i) the portfolio to which the travel relates,
 - (ii) the purpose and anticipated benefits to New South Wales of the travel,
 - (iii) the destinations visited,
 - (iv) the dates of travel,
 - (v) the number of persons who accompanied the Minister (including Ministerial

advisors, agency staff and family members),

(vi) the total cost of airfares,

(vii) the total cost of accommodation,

(viii) the total cost of other travel expenses (including travel allowances).

(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),

(e) any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.

(3) The reference in subclause (2) to a Government Department includes a reference to—

(a) a Public Service agency, within the meaning of the *Government Sector Employment Act 2013*, except a Staff Agency listed in that Act, Schedule 1, and

(b) the Independent Commission Against Corruption, and

(c) the NSW Police Force, and

(d) the Judicial Commission of New South Wales.

(4) **Relevant entities** 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 relevant entity—

(a) the total number and total value of properties disposed of by the relevant entity during the previous financial year,

(b) the relevant entity's guarantee of service (if any).

(5) In this clause—

relevant entity means each of the following—

(a) a statutory body representing the Crown, including a NSW Government agency to

which the *Interpretation Act 1987*, section 13A applies,

- (b) a Council, within the meaning of the *Health Practitioner Regulation National Law (NSW)*, Part 5A,
- (c) an entity with money held in an account within the Special Deposits Account, within the meaning of the *Government Sector Finance Act 2018*, except a Government Department covered by subclause (3).

7 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.

8 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—

- (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.

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).

9 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.

10 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

11 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) *Freedom of Information Act 1991* of South Australia,
- (c) *Freedom of Information Act 1992* of Western Australia,
- (d) *Freedom of Information Act 2016* of the Australian Capital Territory,
- (e) *Information Act* of the Northern Territory,
- (f) *Right to Information Act 2009* of Queensland,
- (g) *Right to Information Act 2009* of Tasmania.

12 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) Australian Music Examinations Board NSW,
- (b) Duke of Edinburgh Award Scheme (NSW State Committee),
- (c) NSW Adult Migrant English Service,

(d) Regional Development Australia.

13 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.

14 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.

15 Repeal and savings

- (1) The *Government Information (Public Access) Regulation 2009* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Government Information (Public Access) Regulation 2009*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Additional open access information—local authorities

(Clause 4)

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) reports by the Chief Executive of the Office of Local Government 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 made on or after 1 July 2010 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) However, 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, or
 - (c) development applications made before 1 July 2010 and any associated documents received (whether before, on or after that date) in relation to the application.

(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 8)

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
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	
Information about complaints to Judicial Commission	
Information about authorised transactions under <i>Electricity Network Assets (Authorised Transactions) Act 2015</i>	
Information about authorised transaction under <i>Land and Property Information NSW (Authorised Transaction) Act 2016</i>	

* 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 NCAT			
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)	

Table 1: Applications transferred to other agencies under Division 2 of Part 4 of the Act (by type of transfer)

	Number of applications transferred
Agency-initiated transfers	
Applicant-initiated transfers	

Schedule 3 Agencies declared to be part of other agencies

(Clause 13)

Subsidiary agency	Parent agency
Aboriginal and Torres Strait Islander Health Practice Council of New South Wales	Ministry of Health
Advisory committee established under the Food Act 2003	Department of Industry
Advisory committee established under the National Parks and Wildlife Act 1974	Office of Environment and Heritage
Advisory committee established under the Protection of the Environment Administration Act 1991	Office of Environment and Heritage
Agricultural industry services committee constituted by the Agricultural Industry Services Act 1998	Department of Industry
Agricultural Scientific Collections Trust	Department of Industry
Animal Research Review Panel	Department of Industry
Anti-Discrimination Board	Department of Justice
Australian Music Examinations Board NSW	NSW Education Standards Authority Staff Agency
Belgenny Farm Agricultural Heritage Centre Trust	Department of Industry
Biodiversity Conservation Trust of New South Wales	Office of Environment and Heritage
Board of Surveying and Spatial Information	Department of Customer Service
Board of the Environment Protection Authority	Environment Protection Authority

Border Fence Maintenance Board	Department of Industry
Botany Cemetery Trust	Department of Industry
Building and Construction Industry Long Service Payments Committee	Treasury
Building Insurers' Guarantee Corporation	NSW Self Insurance Corporation
Bush Fire Co-ordinating Committee	Office of the NSW Rural Fire Service
Cape Byron State Conservation Area Trust	Office of Environment and Heritage
Carers Advisory Council	Department of Family and Community Services
Central Coast Regional Development Corporation	Department of Planning and Environment
Child Death Review Team	Office of the Ombudsman
Children's Court	Department of Justice
Children's Court Advisory Committee	Department of Justice
Children's Court Clinic	Department of Justice
Chinese Medicine Council of New South Wales	Ministry of Health
Chiropractic Council of New South Wales	Ministry of Health
Civil and Administrative Tribunal	Department of Justice
Combat Sports Authority	Office of Sport
Commissioner of the Land and Environment Court	Department of Justice
Committee of inquiry established under the Energy and Utilities Administration Act 1987	Department of Industry
Committee of Review appointed under the Health Services Act 1997	Ministry of Health
Contract of Carriage Tribunal	Department of Justice
Coroner (including the State Coroner and Deputy State Coroner)	Department of Justice
Costs assessor appointed under the Legal Profession Uniform Law Application Act 2014	Department of Justice
Crown Solicitor's Office	Department of Justice
Dental Council of New South Wales	Ministry of Health
Disability Council	Department of Family and Community Services
District Court	Department of Justice
Drug Court	Department of Justice

Duke of Edinburgh Award Scheme (NSW State Committee)	Department of Education
Dumaresq-Barwon Border Rivers Commission	Department of Industry
Dust Diseases Tribunal	Department of Justice
Energy Corporation	Department of Industry
Environmental Trust	Office of Environment and Heritage
Exhibited Animals Advisory Committee	Department of Industry
Financial Counselling Trust Fund	Department of Customer Service
Fluoridation of Public Water Supplies Advisory Committee	Ministry of Health
Geographical Names Board	Department of Customer Service
Greater Sydney Commission	Department of Planning and Environment
Hardship Review Board	Department of Customer Service
Health Administration Corporation	Ministry of Health
Heritage Council of New South Wales	Office of Environment and Heritage
Hunter and Central Coast Regional Planning Panel	Department of Planning and Environment
Hunter Development Corporation	Department of Planning and Environment
Hunter River Salinity Trading Scheme	Environment Protection Authority
Independent Liquor and Gaming Authority	Department of Customer Service
Industrial Committee established under the Industrial Relations Act 1996	Department of Justice
Industrial Registrar	Department of Justice
Industrial Relations Commission	Department of Justice
Land and Environment Court	Department of Justice
Law Reform Commission	Department of Justice
Legal Profession Admission Board	Department of Justice
Legal Services Commissioner	Department of Justice
Liability Management Ministerial Corporation	Treasury
Library Council of New South Wales	Department of Planning and Environment
Local Court	Department of Justice
Local Government Boundaries Commission	Office of Local Government
Local Government Grants Commission	Office of Local Government

Local Government Remuneration Tribunal	Public Service Commission
Long Service Corporation	Treasury
Medical Committee constituted under the <i>Poisons and Therapeutic Goods Act 1966</i>	Ministry of Health
Medical Radiation Practice Council of New South Wales	Ministry of Health
Medical Services Committee established under the <i>Health Administration Act 1982</i>	Ministry of Health
Mental Health Review Tribunal	Ministry of Health
Mining and Petroleum Competence Board	Department of Planning and Environment
National Parks and Wildlife Advisory Council	Office of Environment and Heritage
New South Wales Biological Control Authority	Department of Industry
New South Wales Innovation and Productivity Council	Department of Industry
New South Wales Land and Housing Corporation	Department of Family and Community Services
New South Wales Rural Assistance Authority	Department of Industry
New South Wales Sentencing Council	Department of Justice
Northern Regional Planning Panel	Department of Planning and Environment
NSW Adult Migrant English Service	Department of Education
NSW Coastal Council	Office of Environment and Heritage
NSW Food Authority	Department of Industry
NSW Procurement Board	Treasury
NSW Self Insurance Corporation	Treasury
NSW Skills Board	Department of Industry
NSW Telco Authority	Department of Customer Service
Nursing and Midwifery Council of New South Wales	Ministry of Health
Occupational Therapy Council of New South Wales	Ministry of Health
Optometry Council of New South Wales	Ministry of Health
Osteopathy Council of New South Wales	Ministry of Health
Paramedicine Council of New South Wales	Ministry of Health
Parliamentary Remuneration Tribunal	Public Service Commission
Parramatta Park Trust	Office of Environment and Heritage

Personal Injury Commission	Department of Customer Service
Physiotherapy Council of New South Wales	Ministry of Health
Planning administrator or regional panel appointed under section 9.6 of the Environmental Planning and Assessment Act 1979	The local authority whose functions the planning administrator or regional panel was appointed to exercise
Podiatry Council of New South Wales	Ministry of Health
Poisons Advisory Committee	Ministry of Health
Professional Standards Committee for nurses and midwives	Ministry of Health
Professional Standards Council	Department of Customer Service
Property NSW	Department of Planning, Industry and Environment
Psychology Council of New South Wales	Ministry of Health
Public Defender (including the Senior Public Defender and Deputy Senior Public Defenders)	Department of Justice
Public Guardian	NSW Trustee and Guardian
Radiation Advisory Council	Environment Protection Authority
Registrar under the Aboriginal Land Rights Act 1983	Department of Education
Rental Bond Board	Department of Customer Service
Review panel under the Gas Supply Act 1996	Department of Industry
Rural Fire Service Advisory Council	Office of the NSW Rural Fire Service
Serious Offenders Review Council	Department of Justice
Small Business Commissioner	Department of Industry
Southern Regional Planning Panel	Department of Planning and Environment
State Aviation Working Group	Department of Transport
State Parole Authority	Department of Justice
Statutory and Other Offices Remuneration Tribunal	Public Service Commission
Stewart House Preventorium	Department of Education
Supreme Court	Department of Justice
Sydney Eastern City Planning Panel	Department of Planning and Environment
Sydney West City Planning Panel	Department of Planning and Environment
Teacher Housing Authority of New South Wales	Department of Planning, Industry and Environment

Trust established in respect of a common under the <i>Commons Management Act 1989</i>	Department of Industry
Trustees of the Anzac Memorial Building	Department of Justice
Trustees of the Farrer Memorial Research Scholarship Fund	Department of Industry
Trustees of the Parliamentary Contributory Superannuation Fund	Treasury
Victims Advisory Board	Department of Justice
Waste Assets Management Corporation	Department of Planning, Industry and Environment
Western Regional Planning Panel	Department of Planning and Environment
Workers Compensation (Dust Diseases) Authority	Treasury