

# Applying to Access Personal Information Guidance Note

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## **Background**

A person can apply to access information that is personal information (including their own or that of another person) that is held by the University using either the Government Information (Public Access) Act 2009 (GIPA Act) or the Privacy and Personal Information Protection Act 1998 (PPIP Act). The Information and Privacy Commissioner has a [detailed fact sheet](#) that outlines the process of accessing personal information from agencies.

The GIPA Act allows you to apply for government information, which includes any personal information (including health information) that the University might hold.

The PPIP Act is specific to personal information, and therefore individuals wishing to access their own personal information are recommended to do so under the PPIP Act process.

### **Definition of personal information**

“Personal Information” is defined under Clause 4, Schedule 4 of the GIPA Act and Section 4 of the PPIP Act as follows:

- (1) In this Act, personal information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.”*
- (2) Personal information includes - such things as an individual’s fingerprints, retina prints, body samples or genetic characteristics.*

## **Requests for information**

### **GIPA Act**

If you choose to request your personal information using the [GIPA Access Application Form](#) under the GIPA Act, you can make the request either informally or formally. Differences in the informal and formal processes are outlined below. Both the informal and formal processes are managed through the University’s Right to Information Officer.

### **PPIP Act**

Individuals can request access to personal or health information held by the University under Section 14 of the PPIP Act or Section 26 of the Health Records and Information Privacy Act 2001 (HRIPA).

When an individual wishes to access their personal and/or health information, they are required to complete an [application](#).

Applications should be sent to the University’s Privacy Officer via [privacyofficer@mq.edu.au](mailto:privacyofficer@mq.edu.au)

Applications under the PPIP Act can only relate to your own personal information or personal information for someone who you are authorised to act on behalf of. If you wish to access information that may contain others’ personal information, you may need to apply under the GIPA Act.

## **Proof of Identity of GIPA Act and PPIP Act Applicants**

The University must ensure that the request is made by the individual concerned, or by another person who is authorised to make a request on their behalf, for example, a legal guardian, a person acting under an enduring power of attorney, or an authorised agent.

The University will ask for evidence from an applicant to confirm their identity in accordance with the requirements of the GIPA Act (Section 55(5) GIPA Act).

When an applicant is requesting information on their own behalf, proof of identity may be a certified copy of any one of the following documents:

- Australian Driver's Licence – with current address;
- current Australian Passport – with current address; or
- other proof of identity document including signature and current address details.

### Third-party requests:

The University cannot provide a third party with access to your personal information unless you have provided your consent, or a relevant exemption applies. Note, your authorised representative can only access personal information that is within the scope of their authorisation.

Where another person requests to act on behalf of another individual, the University will ask for evidence from an authorised person concerning their authority to act on behalf of the applicant (for example, a power of attorney or a guardian). Any authorisation to act must be current.

## **Release of information under GIPA**

### Informal release of personal information

'Informal release' occurs when an agency releases information in response to a request, without requiring the person requesting it to lodge a formal access application under Section 8(1), Part 4 of the GIPA Act.

The University cannot charge for informal release of information ([refer to the IPC NSW Fact Sheet Updated August 2020 GIPA Act fees and charges](#)).

Informal applications may allow certain personal information to be provided more quickly than would be the case in a formal application. An application that is informal is not subject to the strict processes under the GIPA Act and the University can impose conditions on the informal release of information (Section 8(2) GIPA Act). Informal applications do not give applicants the review rights available under the formal process.

The University will release personal information informally wherever possible unless there is an overriding public interest consideration against disclosure. Relevant considerations might include if it contains the personal information of a third party, or the information might prejudice law enforcement processes, or disclose certain confidential information. The list of considerations is contained in Section 14 and Schedule 1 of the GIPA Act.

### Formal release of personal information

Unlike an informal application, a formal application requires the University to adhere to the steps and requirements set out in the GIPA Act. In most cases, the University is not

permitted to put any conditions on the use or disclosure of information that is released following a formal process.

A valid application under the GIPA Act must:

- be in writing and lodged with Macquarie University [GIPA Access Application Form is available [here](#)];
- include your name and a postal or email address where all correspondence relating to your application can be sent;
- provide sufficient information to allow the University to find the personal information that is being applied for; and
- include a \$30 application fee unless it is waived or reduced by the agency.

An access application is invalid if it does not meet the requirements above.

The University has a duty to assist applicants:

- to make a valid request; and
- to amend a request that does not identify records sufficiently or would substantially and unreasonably divert the resources of the University.

#### The cost of making an application

If you apply for your personal information under the GIPA Act there is an application fee of \$30.00. However, this fee and other fees and charges may be reduced or waived by the University (Section 27 GIPA Act). There are processing fees that apply under the GIPA Act if the request takes more than 20 hours to process. However, the first 20 hours are free (Section 67 GIPA Act).

If you apply for your personal information under the PPIP Act, it is free of charge.

#### In processing a formal application under the GIPA Act, the University will:

- assess if it is valid and notify you within five working days of receipt of the application (Section 51 (2) GIPA Act);
- consider possible charges;
- locate and number all records;
- consult third parties if required;
- examine records for content where there is an overriding public interest against release;
- consider grounds of refusal;
- comply with all statutory timelines or seek to extend the timeline with an applicant's agreement; and
- provide a Notice of Decision along with relevant records and details of review and appeal rights.

#### Timelines for a formal request

Applications under the GIPA Act are processed on working days and, unless agreed otherwise, the following periods apply:

- 20 working days to make a decision whether to provide access to your personal information and notify you of the decision (Section 57(1) GIPA Act);
- an extension of up to 10 working days if third parties are consulted, or if records need to be retrieved from archives (Section 57 (2) a & b GIPA Act);

- there is a maximum extension allowable of 15 working days for both consultation and retrieving archived records); and
- if the above timelines are not met by the University the decision is deemed to have been refused and this is a reviewable decision under Part 5 the GIPA Act, which means the aggrieved person may be able to exercise their review and appeal rights.

Under the PPIP Act, the University must provide access to your personal information without excessive delay. Specific processing times are not defined in the PPIP Act.

## **Review and Appeal Rights**

### GIPA Act

Under the GIPA Act, a right of review only applies for formal applications (Part 5 GIPA Act). If you are unhappy with the agency's decision about your request to access your personal information either, you can:

- request an internal review within 20 working days after the notice of a decision has been posted to you;
- request an [external review by the Information Commissioner](#) within 40 working days of being notified of the decision; or
- request an administrative review by the NSW Civil and Administrative Tribunal (NCAT) within 40 working days of being notified of the decision. For more information on NCAT, visit [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

Your review rights under the GIPA Act are detailed in the [IPC Fact Sheet](#).

### PPIP Act

If you have made an application under the PPIP Act and are unhappy with the University's decision, you can request an internal review of this decision or conduct within six months from being notified of the decision. In some circumstances, the University may extend this time.

## **Access to Personal Information that is released**

Following a formal application process, the University must provide access to your personal information by:

- allowing you to inspect the record containing the information, together with any facilities to enable the information to be read, viewed or listened to as appropriate;
- providing a copy of the information; or
- providing a written transcript of the information.

The University must provide access in the form you requested unless it would unreasonably interfere with the operations of the University, require the University to incur unreasonable additional costs, be detrimental to the proper preservation of the record, breach copyright, (or providing access in the form requested) or would result in an overriding public interest against disclosure if provided in the form requested.

## **Retention and disposal**

Applications made under the GIPA Act or PPIP Act are recorded in a restricted access case file with a unique identifier within the University's Records Management Database. A GIPA Act case file can only be accessed by:

- an authorised GIPA Officer;
- an appointed internal reviewer;
- the Office of General Counsel;
- the Information and Privacy Commission; and/or
- the NSW Civil and Administrative Tribunal (NCAT).

The GIPA Act case file is also a discoverable record and could be the subject of an access request or subpoena.

All GIPA Act case files have been allocated a records retention period and are kept securely.

Legislative Basis: [General Retention and Disposal Authority: GA28](#)

This authority covers records documenting the function of common administrative records created and maintained by New South Wales Public Offices such as Macquarie University. This general retention and disposal authority is approved under Section 21(2)c of the State Records Act 1998.

In summary there are four applicable retention periods for record types as set out in the following table:

<b>Record type</b>	<b>Disposal Action</b>
Records* relating to requests for or decisions regarding access to or alteration of information under relevant legislation, e.g. Freedom of Information (FOI), GIPAA, privacy or records legislation or legislation specific to the organisation, <b>where the decision to grant or refuse access or alteration:</b> <ul style="list-style-type: none"> <li>• sets a precedent; or</li> <li>• leads to a major change in policies.</li> </ul>	Required as State Archives i.e., keep forever.
<b>where the decision to grant or refuse access or alteration does not:</b> <ul style="list-style-type: none"> <li>• sets a precedent; or</li> <li>• leads to a major change in policies.</li> </ul>	Retain minimum of 10 years after action completed, then destroy.
<b>where the request is not recurring or protracted and the decision to grant or refuse access or alteration does not:</b> <ul style="list-style-type: none"> <li>• sets a precedent; or</li> <li>• leads to a major change in policies.</li> </ul>	Retain minimum of 5 years after action completed, then destroy.
where: <ul style="list-style-type: none"> <li>• the request was withdrawn;</li> </ul>	Retain minimum of 2 years after action completed, then destroy.

<ul style="list-style-type: none"><li>• the request lapsed because of non-payment of application fees;</li><li>• the request was not relevant to the organisation;</li><li>• the applicant was referred to another organisation; or</li><li>• information was not supplied because it was already readily available to the public.</li></ul>	
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\*Records include:

- applications;
- records of decisions or directions;
- related correspondence;
- records of alterations or notations to records claimed to be incomplete, incorrect, irrelevant, out of date or misleading;
- records relating to internal or external reviews; and/or
- appeals of decisions.