



<b>Title:</b>	Access to Information (GIPA) Policy
<b>Policy Number:</b>	SOH145
<b>Effective Date:</b>	6 June 2016
<b>Authorisation:</b>	Chief Executive Officer
<b>Authorisation Date:</b>	3 June 2016
<b>Superseded Policy:</b>	<i>Government Information (Public Access) Act 2009</i> FAQs and Policy
<b>Accountable Director:</b>	General Counsel
<b>Responsible Officer:</b>	GIPA Officer

## 1. CORE PROPOSITION

- 1.1 The *Government Information (Public Access) Act 2009* (the **GIPA Act**) aims to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective.
- 1.2 The GIPA Act applies to all NSW government agencies, including the Opera House. This policy sets out how the Opera House meets its obligations under the GIPA Act by:
  - complying with the mandatory disclosure requirements as prescribed in the GIPA Act;
  - proactively releasing government information where possible; and
  - ensuring that access to government information is only restricted when there is an overriding public interest against disclosure.

## 2. GOVERNMENT INFORMATION

- 2.1 Government information is anything contained in a record held by a government agency.
- 2.2 A record means any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by other means. This includes all documents (whether created or received by the Opera House), emails, records of Microsoft Lync conversations, hand written notes and security footage.

## 3. ACCESS TO GOVERNMENT INFORMATION

- 3.1 The Opera House is committed to facilitating, as far as practicable, an open environment which enables members of the public to access government information which the Opera House holds without the need for formal requests.
- 3.2 In accordance with its obligations under the GIPA Act, the Opera House makes government information available (unless there is an overriding interest against disclosure) in the following ways:
  - mandatory release of information via the Opera House's website, including:
    - an [agency information guide](#) describing the Opera House's structure and functions and how those functions affect the public, as well as the type of information held by the Opera House and how that information is made publicly available;
    - documents tabled in Parliament by, or on behalf of, the Opera House, including our [annual reports](#);
    - the Opera House's [policy documents](#);
    - a [disclosure log](#) of information released under formal access applications that may be of public interest; and
    - a [register of contracts](#) the Opera House has with private sector entities with a value of \$150,000 or more (please see **Appendix A** for more information in relation to the contracts and related information which must be disclosed).
  - proactive release of information via the Opera House's website, including the Opera House Enterprise Strategy, Accessibility Plan, Reconciliation Action Plan, Sustainability Plan and current and past media releases;

- informal release of information in response to an informal request for information (where appropriate); or
- as a last resort, release of information in response to a formal request for access.

3.3 The procedure for handling informal and formal requests for access is set out below.

## 4. PROCEDURE FOR HANDLING ACCESS REQUESTS

### Informal

4.1 If the information sought is not available on the Opera House website, members of the public can make an informal request for the information by contacting the Right to Information Officer directly at:

**Telephone:** 02 9250 7488  
**Email:** GIPA@sydneyoperahouse.com  
**Address:** Sydney Opera House, GPO Box 4274, Sydney NSW 2001

4.2 A formal access application will only be necessary if:

- searching for and retrieving the information sought would require a significant diversion of resources;
- the material contains information about a third party that cannot be deleted or redacted easily or without rendering the information useless, and consultation would need to occur;
- the material is sensitive in nature and requires careful balancing of public interests.

### Formal

4.3 If the information sought is not available on the Opera House's website and cannot be provided by the Opera House informally on request, members of the public have a right to formally apply for access to that information. The application must:

- be in writing;
- clearly state that the information is sought under the GIPA Act;
- be accompanied by a \$30 application fee;
- have a return postal address in Australia as the address for correspondence; and
- include as much information as necessary to enable the Opera House to identify the information being sought.

4.4 If the application satisfies the above requirements, the Right to Information Officer will acknowledge receipt of a valid access application within **five working days** after the application is received and must deal with the application within **20 working days** (subject to any extension allowed for under the GIPA Act).

## 5. RESPONSIBILITIES

### Right to Information Officer

5.1 The Opera House has appointed a Right to Information Officer to deal with requests for information under the GIPA Act.

5.2 The Right to Information officer has the responsibility to:

- provide assistance to the public in gaining access to the Opera House's information;
- review all documents collated by staff in response to a request for information and decide whether the documents should be made publicly available;
- provide training, support and guidance to staff in dealing with the release of information; and
- facilitate reporting in compliance with the GIPA Act.

5.3 The Right to Information Officer will also maintain the [Access to Information](#) page on the Sydney Opera House's website. This includes:

- reviewing and updating the agency information guide as required or at least annually;

- maintaining and updating the disclosure log of released information; and
- creating and maintaining a record of government information that is not made publicly available and any reasons for not releasing that information.

#### All staff

5.4 All staff have a responsibility to:

- identify and proactively release information (including contracts) on the Opera House's website (please see **Appendix A** for more information about the contracts and related information which must be disclosed);
- comply with requests from the Right to Information Officer to locate and provide all relevant information held in their respective areas in response to a request for information. In the event that information cannot be located, a written explanation of the steps that have been taken to search for the information must be provided to the Right to Information Officer (this includes search terms);
- work collaboratively and provide information relating to access requests to the Right to Information Officer in a timely manner; and
- promptly forward any access applications received (whether formal or informal) to the Right to Information Officer for action.

## **6. CONSEQUENCES OF BREACH**

6.1 A staff member who destroys, conceals or alters any record of government information for the purpose of preventing the disclosure of the information as required by the GIPA Act will be guilty of an offence under the GIPA Act. This offence carries a maximum penalty of \$11,000.

6.2 If a staff member becomes aware of a breach of the GIPA Act, the staff member should report the breach in accordance with the *Public Interest Disclosures Act 1994* (see the Opera House *Public Interest Disclosures Policy* for more information). Further information on public interest disclosures can be found on the NSW Information and Privacy Commission website [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

## **7. SUPPORTING DOCUMENTS AND RELEVANT LEGISLATION**

[Government Information \(Public Access\) Act 2009](#)

*Public Interest Disclosures Act 1994*

*Opera House Public Interest Disclosures Policy*

*Opera House Privacy Management Plan*

## **APPROVED**



Chief Executive Officer

Date: 3 June 2016

## Appendix A – Mandatory disclosure of Government contracts

### What is a Government contract?

A government contract is any of the following contracts between a government agency and a private sector entity:

- a contract under which a party agrees to undertake a specific project (such as a construction, infrastructure or property development project);
- a contract under which a party agrees to provide specific goods or services (such as information technology services or sponsorship), other than a contract of employment;
- a lease of real property.

### Contract information disclosure requirements

The GIPA Act requires that for government contracts with a value of \$150,000 (GST inclusive) or more, certain contractual information be disclosed and entered into the government contracts register ([NSW Government e-tender website](#)). This requirement is in addition to the requirement to register the contract in TRIM.

The type of information required to be disclosed depends on the type of contract entered into. The GIPA Act divides the contracts into 3 classes. Please refer to the attached flowchart (**Attachment 1**) to determine the class of the contract that has been entered into. The table in **Attachment 2** sets out the information that is to be disclosed for each class of contract.

### Contract value

The value of a contract is whichever of the following values is appropriate to the kind of contract concerned:

- (a) the total estimated value of the project;
- (b) the total estimated value of the goods or services over the term of the contract;
- (c) the value of the real property transferred;
- (d) the rent for the term of the lease.

If GST pushes the value of a contract above \$150,000 the contract must be disclosed.

### When must the contracts be disclosed?

The relevant information for all classes of contracts must be disclosed within **45 working days** after the contract becomes effective. A contract becomes effective:

- (a) when it is entered into by the Opera House; or
- (b) if the contract contains provisions which state that the contract will not commence until such time as a specific condition is satisfied, at the time that condition is met.

### How long does the information disclosed have to remain on the website?

Contract information remains posted on the [NSW Government e-tender website](#) for at least **20 working days** or until all work under the contract has been completed or goods are supplied, whichever is the greater.

### Responsibility for disclosure of contract information

The contract coordinator in the business unit handling the tender or negotiation of a contract is responsible for disclosing the relevant contract information on the [NSW Government e-tender website](#). This will usually be the same person who is responsible for uploading the contract onto TRIM. A login for the [NSW Government e-tender website](#) can be obtained from the Procurement Team.

### Exempt contracts and information

#### What sort of contracts are exempt from mandatory disclosure?

Individual employment contracts (but not labour hire contracts with employment agencies) and contracts not with the private sector (such as those with another government agency or internal business unit) are exempt and do not have to be disclosed.

### What information is not required to be disclosed?

When disclosing contractual information on the [NSW Government e-tender website](#) the Opera House is not required to disclose the following confidential information:

- (a) the commercial-in-confidence provisions of a contract. ***Please contact the Legal Team for advice in relation to whether provisions of a contract are commercial-in-confidence;***
- (b) details of any unsuccessful tender;
- (c) any matter that could reasonably be expected to affect public safety or security; or
- (d) a copy of a contract, a provision of a contract or any other information in relation to a contract that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record. ***Please contact the Right to Information Officer for any advice in relation to whether there is an overriding public interest against disclosure of information.***

If the Opera House does not include a copy of a contract in the register, or includes only some of the provisions of a contract in the register, we must include in the register:

- (a) the reasons why the contract or those provisions have not been included in the register;
- (b) a statement as to whether it is intended that the contract or those provisions will be included in the register at a later date and, if so, when it is likely that they will be included; and
- (c) if some but not all of the provisions of the contract have been included in the register, a general description of the types of provisions that have not been included.

### **Contract variations**

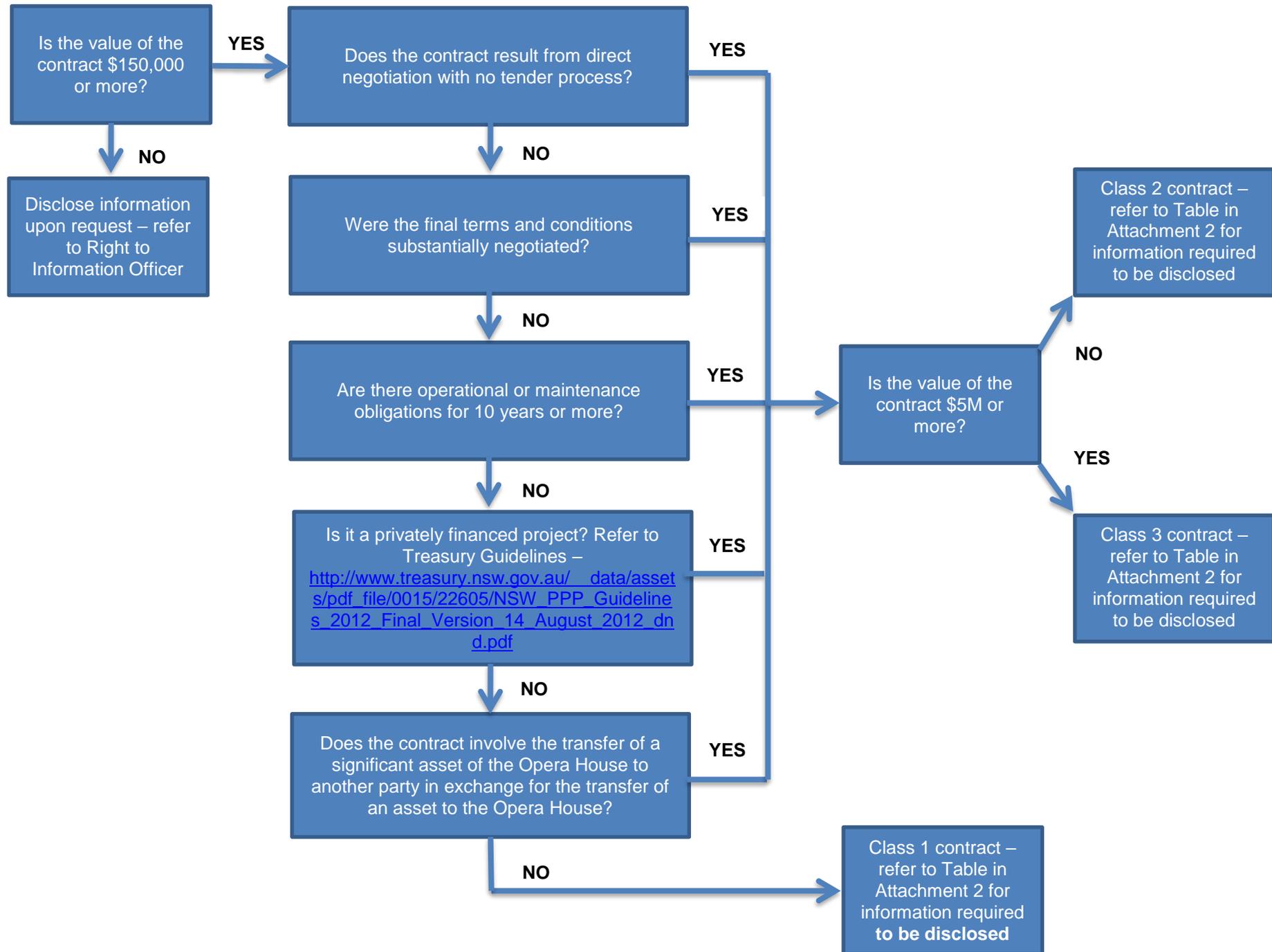
If a contract is varied and the variation affects the particulars that are required to be included in the government contracts register in relation to the contract, the register must be updated within **45 working days** after the variation becomes effective.

Some examples include:

- extending the term of a contract;
- varying the value of a contract;
- any other key elements of the contract such as the nature of services provided.

If you are unsure whether a contract variation should be disclosed contact the Right to Information Officer for advice.

**Attachment 1 – Contract class flowchart**



## Attachment 2 – Information required for Government contracts register

**Note: Information about class 1, 2 or 3 contracts must be entered into the Government contracts register within 45 working days of the contract becoming effective.**

The following information must be entered into the Government contracts register.

<b>Class 1 contracts</b>
Name and business address of the contractor (including ACN, ABN and trading name, where applicable)
Particulars of the project, goods or services or the real property
Duration of the contract (including date when the contract became effective)
Particulars of any related body of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in the contractor's obligations or receive a benefit
Value of the contract and/or estimated amount payable to the contractor
Description of any provisions under which the amount payable to the contractor may be varied
Description of any provisions about renegotiating the contract
If there was a tendering process, the method of tendering and a summary of the criteria against which tenders were assessed
Description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.
<b>Class 2 contracts – all of the information required for a class 1 contract and the following additional information</b>
Future transfers of assets to the State at no cost, including the date
Future transfers of significant assets to the contractor, including the date
Any cost-benefit analysis
Components and quantum of the public sector comparator (if used)
If relevant, a summary of information used in the contractor's full base case financial model
If relevant, particulars of how risk during the construction and operational phases is to be apportioned between the parties
Particulars as to significant guarantees or undertakings between the parties
Other key elements
<b>Class 3 contracts – all of the information required for a class 2 contract and a copy of the contract</b>