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Update Summary

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NEW SOUTH WALES ADMINISTRATIVE LAW

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New commentary has been provided by Dr Juliet Lucy

Privacy and Personal Information Protection

Updated:

- Commentary on **Commonwealth privacy legislation** at [70.180].
- Commentary on **New South Wales privacy legislation** at [70.200].

Privacy and Personal Information Protection Act 1998

Updated :

- Commentary on **Information about a deceased individual (s 4(3)(a))** at [70.11350].
- Commentary on Relationship with access to government information rights at [70.13140].
- Commentary on Requiring the performance of an information protection principle or a privacy code of practice: s 55(2)(c)

The former Appeal Panel of Administrative Decisions Tribunal takes a different view on **Police Act complaint (s 4(3)(h))** at [70.11400]: See *KO v Commissioner of Police, New South Wales Police* (GD) [2004] NSWADTAP 21 at [30].

New paragraphs inserted in **Overview** at [70.13120]. Section 14 confers a right on an individual to request access to personal information held by the agency. See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [44].

Section 14 is not to be read in isolation, but is subject to other sections of the *Privacy and Personal Information Protection Act 1998* which contain conditions or limitations on access to personal information or on the process of considering a request for access. See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [38].

New paragraphs inserted in **Excessive delay or expense** at [70.13160] that an agency is obliged to provide requested personal information without excessive delay or expense. It also defines what constitutes "delay". See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [50] at [70.13160].

Additional paragraph inserted in **Sufficiency of search** at [70.13170] wherein the Court of Appeal found that s 14 does not require an agency to conduct a search for personal information if this would require an unreasonable and substantial diversion of the agency's resources within s 60(1)(a) of the *Government Information (Public Access) Act 2009*. See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [71].

In **Section 20** Commentary, at [70.14140], *Government Information (Public Access) Act 2009* is updated, wherein an agency may refuse to provide an individual with personal information requested under s 14 of the PPIP Act, if dealing with the request would require an unreasonable and substantial diversion of the agency's resources within s 60(1)(a) of the GIPA Act. See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [71].

In **Orders which may be made (s 55(2))** at [70.19060], the new inserted paragraph states that there is no mechanism for enforcing any order made by the Tribunal, apart from the possible enforcement of a monetary order under s 55(2)(a). See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [48].

Health Records and Information Privacy Act 2002

Updated:

- Commentary on **GIPA Act not affected - s 22(1) and (2)** at [70.42723].
- Commentary on **GIPA Act and PPIP Act conditions and limitations apply – s 22(3)** at [70.42726].

In **Section 48** Commentary, the **Overview** states that although rarely exercised, the Tribunal conducted an inquiry to a complaint to the Privacy Commissioner at [70.46910]. See *FHP v Arys Health Pty Ltd* [2024] NSWCATAD 27.

Also, in **Section 48** Commentary, new paragraph inserted in **Overview** at [70.50240], the public sector agency must first identify the relevant information being requested and then assess the entitlement of the person requesting it.

- Further in **Section 48** Commentary at [70.50250], the test of “excessive delay” must take account of the need for an organisation to identify the relevant information and then assess the entitlement of the person requesting it. See *Commissioner of Police v Ritson* [2023] NSWCA 300 at [50], and *LN v Sydney Local Health District (No 2)* [2012] NSWADTAP 41 at [13].

