

**Disclaimer: This is guidance material only and does not replace reading the legislation. For further information refer to the legislation and please check the website for updates and other information.**

## Information Requests

### At a glance

- The *Government Sector Finance Act 2018* (GSF Act) has provisions that require and facilitate the sharing of certain information about GSF agencies in respect of their financial operations and performance.
- One aim of the information sharing provisions is to facilitate better informed decision-making by the Treasurer and the Expenditure Review Committee of Cabinet through the provision of improved information.
- Another aim is to facilitate cluster operations by fostering a culture of information sharing across the NSW government sector without the need to formally exercise the legislative provisions.
- The Treasurer's powers to request agency information are delegable but only to Ministers and Secretaries of Departments, and the disclosure of information is not required where it is prohibited by other legislation.

### Information requests under the GSF Act

The GSF Act contains provisions relating to information requests and performance information which are intended to support Government decision making about resource allocation, and outcome budgeting. This fact sheet focuses largely on the Treasurer's power to request information while a separate fact sheet (see below) focuses on the information sharing more broadly.

The Treasurer's power to request information is intended to be a high-level 'circuit breaker' to assist the Treasurer when material information cannot be obtained through informal means. Importantly, the approach seeks to drive cultural change and promote increased co-operation and information sharing between Treasury and the sector.

#### ***What do the information request provisions allow?***

The GSF Act contains a provision allowing the Treasurer to make a written request to an Accountable Authority for a GSF Agency to provide financial and performance information about the Agency, for the purpose of making Government resource allocation decisions. Specifically, the types of information the Treasurer can request include:<sup>1</sup>

- Banking information of the agency
- Cash flows of the agency
- Information about the sources and application of the Agency's funding
- Information about financial arrangements entered into by or on behalf of the Agency
- Information for use in preparing the Budget
- Annual reporting information of the agency (see Division 7.3 of the GSF Act)
- Performance information required to be kept under Part 8 of the GSF Act concerning the agency's performance
- Any other kind of information prescribed by the regulations

The GSF Act allows the Treasurer's directions to specify the type of performance information that is required to be kept under Part 8.

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<sup>1</sup> This is defined as 'relevant agency information' under clause 9.1 of the GSF Bill.

### **What do the information request provisions not allow?**

The GSF Act does not allow the Treasurer to request information that falls outside of the categories of information listed above. It also does not allow for the information to be obtained for a purpose other than making resource allocation decisions by or for the Government.

However, it does not limit any other entitlement of the Treasurer or other Ministers to obtain and share information of agencies.

Requests for information must be complied with unless the disclosure of the information is prohibited by any other legislation (for example, privacy legislation). Therefore, where another law prohibits the disclosure of particular information, the Treasurer will not be able to access that information under the GSF Act. Where an Accountable Authority for a GSF Agency does not comply with a request for this reason, they must provide the Treasurer with a written notice of the reasons for not complying.



#### **Tip**

If you are not sure whether an agency is a GSF Agency, or who the Accountable Authority of a GSF Agency is, refer to the GSF Agency Fact Sheet, Accountable Authority Fact Sheet, or the click-through videos on the Treasury Legislation website.

### **Who can request information?**

The GSF Act allows the Treasurer to make a written request for information. This function is delegable under the GSF Act to another Minister, or the Accountable Authority for the Treasury (Treasury Secretary). The Treasury Secretary will only be able to exercise this function under the GSF Act if the Secretary has received a delegation from the Treasurer.

### **Who needs to comply with a request?**

Generally, all GSF Agencies are required to comply with a written request for information unless the disclosure of that information is prohibited by other legislation. However, there are some exceptions for 'separate GSF agencies'<sup>2</sup> who are not required to comply with such requests, but they are still required to provide a written statement documenting their reasons for not complying.

### **Other information access powers**

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The GSF Act contains specific information access provisions relating to financial arrangements and financial records.

- The Treasurer, or a person nominated by the Treasurer, is authorised to access any information of a GSF Agency concerning their use of financial services provided under a State financial services agreement (such as the State banking contract).<sup>3</sup>
- The Treasurer, the responsible Minister for a GSF Agency, and their delegates, are entitled to full and free access to a GSF Agency's financial accounts and records. This is subject to any law prohibiting the disclosure of that information.<sup>4</sup>

It is also worth noting that the GSF Act contains provisions allowing a Minister to request information for the purposes of making resource allocation decisions. This is similar to the Treasurer's power except that it is limited to agencies for which the Minister is the responsible Minister, and agencies which have authority to make payments from, or receives funding from, that Minister's appropriation.<sup>5</sup>

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<sup>2</sup> Separate GSF Agency includes the Audit Office, the Independent Commission Against Corruption, the Judicial Commission of New South Wales, the New South Wales Electoral Commission and the Ombudsman's Office, and any other entity prescribed in the regulations as being a separate GSF Agency.

<sup>3</sup> Refer to clause 6.16 of the GSF Bill.

<sup>4</sup> Refer to clause 7.5(2) of the GSF Bill.

<sup>5</sup> Refer to clause 9.3 of the GSF Bill.

## Performance information

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Performance information generally includes information about:

- the way the agency performs in administering or providing any programs for which the agency is responsible, and
- indicators about the way an agency performs its work (including in relation to any programs the agency administers or provides).

Much of this information is already kept and monitored by agencies.

As a general rule, GSF Agencies are required to keep performance information in accordance with Treasurer's directions. In addition, the GSF Act provides that specific GSF Agencies can be excluded from this requirement by the regulations.

Part 8 of the GSF Act allows the Treasurer to issue directions about records and other information that GSF Agencies must keep in relation to their performance. It does not allow the Treasurer to set agency's performance standards.

### Guidance Note: Process for making information requests

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The following guidance describes the expected process a Treasury officer should follow to obtain information from an agency:

1. Request the information at the government officer level. As most of this information is already likely kept and monitored by agencies, it is expected that most government officers will comply with an informal request. If the information is not provided at the analyst level the issue can be escalated to facilitate further negotiations at a more senior level within Treasury.
2. In extreme cases if a formal request is required, a written request addressed to the Accountable Authority for the agency must be prepared. This written request should specify the information being sought, specify whether the information needs to be provided in a particular way or within a particular timeframe, and be signed by the Treasury Secretary.<sup>6</sup>
3. Once the formal request has been sent, the Accountable Authority for the agency will either:
  - a. provide the information within the specified timeframe or,
  - b. provide a written notice of their reason for not complying with the request.

### Need more information?

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Refer to:

- Part 8 of the *Government Sector Finance Act 2018*
- Division 9.1 of the *Government Sector Finance Act 2018*
- Information Sharing and Performance Fact Sheet

Email the Legislation team at [Legislation@treasury.nsw.gov.au](mailto:Legislation@treasury.nsw.gov.au).

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<sup>6</sup> This power can only be exercised by the Secretary of the Treasury under delegation from the Treasurer.