



PORT STEPHENS
COUNCIL

Ms Telina Webb
PO BOX 8030
MARKS POINT NSW 2280

Dear Ms Webb

**Re: FORMAL ACCESS APPLICATION
GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009**

Please find attached Council's Notice of Decision in this matter.

If you have any questions, please contact Holly Jamadar on (02) 4988 0406 or at Holly.Jamadar@portstephens.nsw.gov.au.

Yours faithfully

Holly Jamadar
Governance Officer / Right to Information Officer
8 August 2018

Telephone enquiries
(02) 4988 0406
Please quote file no: PSC2018-02577
IPC Reference no: POR000118

PORT STEPHENS COUNCIL

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Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Telina Webb
File Ref:	PSC2018-02577
Decision maker:	Holly Jamadar – Governance Officer
Date of decision:	8 August 2018

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1. Summary of access application

On 20 July 2018, we received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). You asked for the following information:

"Full and unedited copy of all UCC incident report forms [for both my husband and I]."

I note the second paragraph in your covering letter whereby you stated "I also refer Council to correspondence from my husband giving full authority for Council to process any request for information that relates to him without the need to petition him for same".

I do note that Council requested you clarify the scope by way of providing a definition of 'UCC'. I refer to your letter which was sent via email on Saturday 4 August 2018 dated 3 August 2018 however received 6 August 2018 whereby you provided "Firstly may I please refer you to Council's Managing Unreasonable Complainants Policy No: PSC2010-0008, wherein the first line under the Heading "Purposes" clearly states: This policy is to assist all staff members to better manage unreasonable complainant conduct ("UCC")".

2. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

I have decided, under section **58 (1) (b)** of the GIPA Act, that the information you have requested is not held by Council.

In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

- (a) the reasons for my decision and the findings on any important questions of fact underlying those reasons; and
- (b) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure (see the attached Schedule of Documents).

You can ask for a review of this decision. For details about how to do so, see part 7 of this Notice.

3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application. I have searched our records to find any information that falls within the scope of your application.

3.1. Searches were conducted in Council's electronic management system, EDRMS whereby relevant keyword searches were performed. A few examples of searches used included "Telina Webb" "Paul McEwan" "Incident report" "UCC" "UCC Incident report forms" "Unreasonable complainant" etc.

3.2. Additional searches were carried out by Council's Risk Management Officer who has access to all incident forms/reports received by Council. Independent searches were undertaken to ensure efficiency and that all databases and registers of council were searched.

3.3. Searches were performed in iFerret which allows access to Council drives and network systems. Key word searches were undertaken to locate any records falling within the scope of your application. Some examples of searches used include: "Telina Webb" refined by "Incident", "Paul McEwan" refined by "Incident", "UCC", "Incident report" refined by both "Telina Webb" and "Paul McEwan", "Managing unreasonable complainant" "Unreasonable complainant conduct" etc.

4. The public interest test

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

- (a) identifying any public interest considerations in favour of disclosure;
- (b) identifying any relevant public interest considerations against disclosure; and
- (c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- (a) in a way that promotes the objects of the GIPA Act;
- (b) with regard to any relevant guidelines issued by the Information Commissioner;
- (c) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
- (d) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- (e) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

4.1 Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

I find the following considerations in favour of disclosure are relevant to your application:

- **Under section 5 of the GIPA Act there is a presumption in favour of the disclosure of government held information which promotes to objectives of the GIPA Act. This factor should be noted in any application however is not relevant to this particular application given the information requested is not held by Council.**

4.2 Personal factors of the application

I can also take into account any personal factors of your application, under section 55 of the GIPA Act. I have considered:

- **You have requested information that relates to either you or your husband.**

4.3 Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act. To show that they are relevant to the information you asked for, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

As the information you have requested is not held by Council there are no public interest considerations against disclosure relevant to this application. The considerations against disclosure found under section 14 of the GIPA Act can only be relevant to/for an application if documents were produced or located within the scope of your application.

4.4 Consultation

The information that you asked for does not require consultation under the GIPA Act as the information is not held.

4.5 Balancing the public interest test

As there were no documents identified as falling within the scope of your application, a public interest test cannot be conducted for this application.

5. Processing charges

Under sections 64(1) and (2) of the GIPA Act, we may require you to pay processing charges, at a rate of \$30 per hour, for the time spent dealing with your access application. The application fee of \$30 counts as payment of one hour of the processing charges.

You are requested to pay processing charges of **\$90.00**. Please find attached a Table of Processing Charges, which shows how time was spent processing your application and the charges that apply.

You can ask for a review of the decision to impose processing charges. For information about how to do so, see part 7 of this Notice.

6. Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

In the letter acknowledging receipt of your valid application, sent on **23 July 2018**, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log, in certain circumstances (for example, if you seek access to your own personal information).

You did not object to your application being published on Council's disclosure log however I do not deem the information you have requested to be of particular interest to any other member of the community (other than you the applicant of this request) therefore I will not be publishing your application on Council's disclosure log.

7. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns. My contact details are set out below.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me;
- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

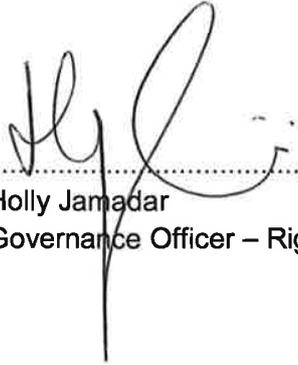
To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au.

You can also contact the IPC on free call 1800 IPC NSW (1800 472 679).

8. Further information

If you have any questions about this notice or would like any further information, please contact **Holly**

Jamadar, on 49880406.



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Holly Jamadar
Governance Officer – Right to Information Officer

LOG OF ACTIONS PERFORMED		
Date	Action	Time Taken (Hrs)
20.7.18	Receipt of application.	0.25
20.7.18	Receipt raised	0.25
20.7.18	Scanned and set up new container.	0.25
20.7.18	Logged request on IPC website.	0.25
23.7.18	Acknowledgement letter was finalised and posted to Applicant.	0.25
24.7.18	Clarification of scope requested	0.25
6.8.18	Clarification of scope provided	0
7.8.18	Searches conducted by Council's Risk Management Officer	0.5
7.8.18	Searches conducted in EDRMS	0.75
7.8.18	Searches conducted in iFerret	1
7.8.18	Drafting Determination and Schedule of Documents.	1.25
8.8.18	Settling Decision + Posted to Applicant	0.25
	<i>Total hours</i>	5.25
	<i>Total hours to be charged (in bold)</i>	4
	<i>Total hours to be charged (in bold) minus first hour of processing</i>	3