

Telina Webb  
E: [draftcom@bigpond.com](mailto:draftcom@bigpond.com)

Tuesday 19<sup>th</sup> March 2019

Pages Total: (1) One  
Attachments: (2) Two

Port Stephens Council  
Att: **Tony Wickham**  
116 Adelaide Street  
Raymond Terrace NSW 2324  
E: [tony.wickham@portstephens.nsw.gov.au](mailto:tony.wickham@portstephens.nsw.gov.au)

Mr Wickham

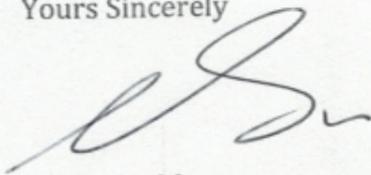
**RE: FORMAL GIPA REQUEST -  
Full & Unedited copy of recording - 20<sup>th</sup> April 2018**

Reference is made to the NCAT Appeal Panel Hearing of 20<sup>th</sup> April 2018.

I formally request a full and unedited copy of the recording disclosed by Carlo Zoppo during those proceedings.

My address for any and all Council response to this Application including its ensuing Notice of Decision is [draftcom@bigpond.com](mailto:draftcom@bigpond.com), as indicated on the Application Form.

Yours Sincerely



Telina Webb

**Encl:**

- **Payment of \$30.00**
- **Completed Formal Application**



# Formal Access Application Form

Government Information (Public Access) Act 2009

116 Adelaide Street,  
Raymond Terrace NSW 2324

PO Box 42,  
Raymond Terrace NSW 2324

p (02) 4988 0255 | f (02) 49873612  
e council@portstephens.nsw.gov.au

DX 21406 | ABN 16 744 377 876

Please complete this form to apply for formal access to government information under the Government Information (Public Access) Act 2009 (GIPA Act). If you need help in filling out this form, please contact the Right to Information Officer on (02) 4980 0255 or visit our website at www.portstephens.nsw.gov.au

## 1. Your details

Surname: TELINA WSTB Title: Mr/Mrs/Ms MS.

Other names: \_\_\_\_\_

Postal Address: draftteam@bigpond.com Postcode: \_\_\_\_\_

Day-time telephone: \_\_\_\_\_ Email: \_\_\_\_\_

The questions below are optional and the information will only be used for the purposes of providing better service.

Place of birth: \_\_\_\_\_ Main language spoken: \_\_\_\_\_

Aboriginal or Torres Strait Islander:  Yes  No (tick one)

Do you have special needs for assistance with this application:  
\_\_\_\_\_

Please indicate if you agree to receive correspondence at the above email address. Please note that even if consent is provided, correspondence will be sent to the nominated email at Council's discretion.  Yes  ~~No (tick one)~~

**Third Party Consultation:** Under section 54 of the GIPA Act, if the information you are requesting contains information about another person, business or agency, Council may be required to consult with third parties before deciding your application. The purpose of this consultation is for Council to determine whether the third party has an objection to disclosure of some or all of the information being requested. Please indicate whether you consent to your identity as an applicant being disclosed to the involved third party:

No (tick one)

## 2. Proof of identity

Only required when an applicant is requesting information on their own behalf.

When seeking access to personal information, an applicant must provide proof of identity in the form of a certified copy of any one of the following documents:

- Australian driver's license with photograph, signature and current address
- Current Australian passport
- Other proof of signature and current address details

## 3. Government information

Please describe the information you would like to access in enough detail to allow us to identify it. Note: If you do not give enough details about the information, the agency may refuse to process your application.

PLEASE REFER TO MY COVERING LETTER DATED 19TH MARCH 2009.

Are you seeking personal information?  Yes  No (tick one)

#### 4. Form of access

How do you wish to access the information?

Inspect the document(s)  A copy of the document(s)

Access in another way (please specify)

#### 5. Application fee

attach payment of the \$30 application fee by cash/cheque/money order (circle one). (Note: please do NOT send cash by post)

#### 6. Disclosure log

if the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in the agency's 'disclosure log'. This is published on the agency's website.

Do you object to this?  No (tick one)

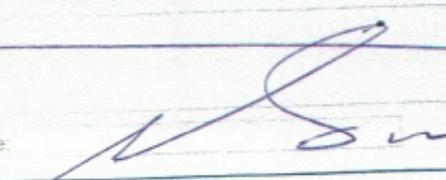
#### 7. Discount in processing charges

You may be asked to pay a charge for processing the application (\$30 / hour). Some applicants may be entitled to a 50% reduction in their processing charges. If you wish to apply for a discount, please indicate the reason:

Financial hardship - please attach supporting documentation (e.g. a pension or Centrelink card)

AND / OR

Special benefit to the public - please specify why below:

Applicant's signature: 

Date: 19.03.2019.

Please post this form or lodge it at:

116 Adelaide Street, Raymond Terrace NSW 2324 or PO Box 42, Raymond Terrace NSW 2324

General information about the GIPA Act is available by calling the NSW Information & Privacy Commission on freecall 1800 472 679 or at its website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

#### YOUR PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy

Purpose: Public access to Council's documents

Intended recipients: Council staff and is publicly available under the Government Information Public Access Act 2009.

Supply: Voluntary

Consequence of Non Provision: Insufficient information will be provided

Storage and security: This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation.

Access: Please contact Council on (02) 4980 0255 to enquire how you can access information.

Date application received: \_\_\_\_\_

File reference: \_\_\_\_\_

2p22

\*\*\* REPRINT \*\*\*

ABN #:16744377876  
 PORT STEPHENS COUNCIL  
 PO BOX 42  
 RAYMOND TERRACE NSW 2324  
 Ph NOT REQUIRED Fax  
 Email:  
 Web: HTTP://WWW.PORTSTEPHENS.NSW.GOV.AU

Date 19/03/2019 10:31  
 Receipt 02902613:0001 Terminal 36:23  
 TELINA WEBB  
 FORMAL GIPA

Details	Amount
GIPPA Fees	30.00
Credit Card Fee	0.17
Total Value:	30.17
Tendered	30.17
Credit	0.00
Change	

8V2



**PORT STEPHENS**  
COUNCIL

Ms Telina Webb

By email – [Draftcom@bigpond.com](mailto:Draftcom@bigpond.com)

**Re: FORMAL ACCESS APPLICATION**

**GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009**

I refer to the GIPA request lodged on 19 March 2019 whereby you request:

*"Full & Unedited copy of recording – 20<sup>th</sup> April 2018  
Reference is made to the NCAT Appeal Panel Hearing of 20<sup>th</sup> April 2018.  
I formally request a full and unedited copy of the recording disclosed by Carlo Zoppo during those proceedings."*

In order to process your request can you please confirm which of the following accurately depicts the information you are seeking:

1. A copy of the recording of the proceedings that occurred on 20 April 2018
2. Or, are you advising Mr Zoppo made reference to a recording (of another matter) during those proceedings and it is in fact that recording (of a different date) you seek.

Once this information has been provided your request will continue to progress.

Yours faithfully

Holly Jamadar

Governance Officer – Right to Information Officer

21 March 2019

Telephone enquiries

(02) 4988 0406

Please quote file no: PSC2019-00702

IPC Reference no: POR000143

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)  
ABN 16 744 377 876

**From:** [Holly Jamadar](#)  
**To:** ["Draftcom"](#)  
**Subject:** Holly Jamadar - further - REQUESTING CLARIFICATION OF SCOPE - FORMAL GIPA REQUEST - TELINA WEBB - 21 MARCH 2019  
**Date:** Friday, 22 March 2019 11:26:00 AM  
**Attachments:** [image001.png](#)  
[image010.jpg](#)  
[image011.jpg](#)  
[image012.jpg](#)  
[image013.jpg](#)  
[image014.jpg](#)

---

*Telephone enquiries  
Holly Jamadar  
P: (02) 4980 0406  
Please quote file no:  
PSC2019-00702*

Ms Telina Webb

By email – [draftcom@bigpond.com](mailto:draftcom@bigpond.com)

Dear Ms Webb

**FORMAL REQUEST  
GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA)**

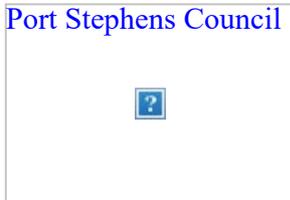
Thankyou for your prompt response.

Are you able to advise whether the recording referred to is a recording of another/previous matter heard before the Tribunal or is the recording of something else completely? Further to this, if you have a date of the recording can you please provide that to assist me in this request. Any information you can provide about the recording or when it was mentioned during the proceedings may significantly reduce the processing/searching time for this application.

Your request will continue to progress once a response to the above is received.

Yours faithfully

[Port Stephens Council](#)



**Holly Jamadar**  
Governance Officer

---

p 02 4988 0406 | w [portstephens.nsw.gov.au](http://portstephens.nsw.gov.au)



[Nelson Bay Public Domain Plan public exhibition](#)



**From:** Draftcom [mailto:draftcom@bigpond.com]  
**Sent:** Thursday, 21 March 2019 5:12 PM  
**To:** Holly Jamadar  
**Subject:** Re: REQUESTING CLARIFICATION OF SCOPE - FORMAL GIPA REQUEST - TELINA WEBB - 21 MARCH 2019

Ms Jamadar,

I am not referring to the Hearing Recording of 20th April 2018, that is something which can only be obtained from NCAT.

I am asking about a recording referred to by Carlo Zoppo on 20th April 2018, it is that recording I request a full and unedited copy of.

Telina Webb

On 21 Mar 2019, at 4:37 pm, Holly Jamadar <[Holly.Jamadar@portstephens.nsw.gov.au](mailto:Holly.Jamadar@portstephens.nsw.gov.au)> wrote:

*Telephone enquiries  
Holly Jamadar  
P: (02) 4980 0406  
Please quote file no:  
PSC2019-00702*

Ms Telina Webb

By email – [draftcom@bigpond.com](mailto:draftcom@bigpond.com)

Dear Ms Webb

**FORMAL REQUEST  
GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA)**

Please find Council's letter attached requesting clarification of the scope of your request.

Yours faithfully

[<image001.png>](#)

**Holly Jamadar**  
Governance Officer

---

p 02 4988 0406 | w [portstephens.nsw.gov.au](http://portstephens.nsw.gov.au)

[<image007.jpg>](#) [<image008.jpg>](#) [<image009.jpg>](#) [<image010.jpg>](#)

[<image006.jpg>](#)

---

**From:** Holly Jamadar  
**Sent:** Thursday, 21 March 2019 4:36 PM  
**To:** 'Draftcom'

**Subject:** ACKNOWLEDGMENT LETTER - FORMAL GIPA REQUEST - TELINA WEBB - 21 MARCH 2019

*Telephone enquiries  
Holly Jamadar  
P: (02) 4980 0406  
Please quote file no:  
PSC2019-00702*

Ms Telina Webb

By email – [draftcom@bigpond.com](mailto:draftcom@bigpond.com)

Dear Ms Webb

**FORMAL REQUEST  
GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA)**

Please find Council's Acknowledgement letter attached.

Yours faithfully

[<image001.png>](#)

**Holly Jamadar**  
Governance Officer

---

p 02 4988 0406 | w [portstephens.nsw.gov.au](http://portstephens.nsw.gov.au)

[<image002.jpg>](#) [<image003.jpg>](#) [<image004.jpg>](#) [<image005.jpg>](#)

[<image006.jpg>](#)

\*\*\*\*\* Confidentiality and Disclaimer Statement \*\*\*\*\*  
This email and any attachments are intended for the named recipient only and may contain private, confidential or legally privileged information as well as copyright material. Port Stephens Council does not waive any client legal privilege attaching to this email. The information must not be copied, printed, distributed or adapted without Council's consent. If you are not the intended recipient you must not reproduce or distribute any part of this email, disclose its contents to any other party, or take any action in reliance on it. If you have received this email in error, please contact the sender immediately and delete the message from your computer.

This email does not constitute a representation by the Port Stephens Council unless the author is legally entitled to do so. Any email message sent or received by Port Stephens Council may need to be disclosed by the Council under the provisions of the Government Information (Public Access) Act 2009 (NSW). Any email message sent or received by Council may be saved in Council's Electronic Document Management System.

This email and any attachments have been virus scanned however Port Stephens Council does not represent or warrant that this communication is secure and free from computer viruses or other defects and will not affect your computer. No liability is accepted for any loss or damage resulting from a computer virus, or resulting from a delay or defect in transmission of this email or any attached file. This notice should not be amended or deleted.

[<PSC-PRT01\\_PSC-PRT51\\_1593\\_001.pdf>](#)



**PORT STEPHENS**  
COUNCIL

Ms Telina Webb

By email – [Draftcom@bigpond.com](mailto:Draftcom@bigpond.com)

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

I refer to your formal GIPA Application received 21 March 2019. I note that in my absence you have been in correspondence with Council's Paralegal in respect of this application, more specifically, concerning specifics regarding the information/recording requested.

I firstly note section 41 of the GIPA Act which outlines the conditions that must be satisfied in order for an application to be initially deemed valid. I make specific reference to section 41 (1) (e) that provides an application "...*must include such information as is reasonably necessary to enable the government information applied for to be identified*".

As the recording you have mentioned is unknown to the Council staff you identified in your access application (Tony Wickham and Lisa Marshall) as well as Council's legal representative, Carlo Zoppo of Lindsay Taylor Lawyers, Council has been unable to identify what recording you are seeking. At this stage it therefore appears that the application may not be valid. I do note that an acknowledgement letter was sent advising the application was, at first instance valid. I refer you to section 51 (4) of the GIPA Act that states "*Acknowledging receipt of an application as a valid access application does not prevent the agency from subsequently deciding that the application is not a valid access application*".

I therefore advise that at this stage your application is not deemed to be valid as you have not provided enough information to accurately identify the information you are seeking.

Section 52 of the GIPA Act provides that Council must assist you in amending your application in attempt to make the application valid. I now provide you a final opportunity to produce/provide any additional information or documentation which may assist me in identifying what recording you are referring to. Additional information would include a transcript or recording of the proceedings on 20 April 2018.

If no additional information is provided which will assist me in identifying the information you have requested by **12 April 2019** then you will be refunded your application fee and provided notice that the application cannot be processed given it is deemed to be invalid.

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

| Page 1  
[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)  
ABN 16 744 377 876

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Holly Jamadar', written over the typed name and title.

**Holly Jamadar**  
**Governance Officer / Right to Information Officer**  
8 April 2019

Telephone enquiries  
(02) 4988 0406  
Please quote file no: PSC2019-00702  
IPC Reference no: POR000143

**From:** [Draftcom](#)  
**To:** [Holly Jamadar](#)  
**Subject:** Formal GIPA Ref No: PSC 2019 - 00702 - Amendment of Scope  
**Date:** Monday, 8 April 2019 5:05:40 PM

---

Ms Jamadar,

Please be advised of the amendment of scope of the Application to include:

**“An unedited copy of the documents referred to by Carlo Zoppo during the Hearing of 20th April 2018, documents he referred to at the same time as the recording.”**

This additional piece of information / request for information should assist the progression of the Application.

I would imagine Mr Wickham & Ms Marshall would have knowledge of the documents referred to, given it is unlikely there is any other person within Council who could have provided them to Carlo Zoppo.

In this regard, the requested recording and the documents are clearly connected to each other.

I trust this qualifies under Section 41 (1) (e) of the GIPA Act 2009.

Telina Webb

Begin forwarded message:

**From:** Draftcom <[draftcom@bigpond.com](mailto:draftcom@bigpond.com)>  
**Subject:** Re: TELINA WEBB - FORMAL GIPA - LETTER SENT REGARDING VALIDITY OF APPLICATION  
**Date:** 8 April 2019 at 3:20:45 pm AEST  
**To:** Holly Jamadar <[Holly.Jamadar@portstephens.nsw.gov.au](mailto:Holly.Jamadar@portstephens.nsw.gov.au)>

Ms Jamadar,

It is actually quite shocking to realise the individuals involved with / and who have direct personal knowledge of the recording in question, are all denying knowledge of it.

You have been provided the NCAT Matter No., the Hearing Date, and the participants. You have been informed it was Carlo Zoppo who made the statement and claimed he had a recording for the tribunal. All these individuals know this occurred in the afternoon portion of the Hearing.

The requested recording is undoubtedly in Council's possession and likely Carlo Zoppo has a copy.

Apart from these details which more than adequately address the clauses of the GIPA Act you've referred to, I don't know what else to offer you, as I've already stated to Cherylanne Bailey in your absence.

Again, I advise if I knew what the content of the recording was I would not be asking for it. However there are (3) three individuals who know precisely what the recording consists of.

I look forward to receiving your Notice of Decision which is at your discretion.

I have no questions but I do have serious concerns about the manner in which this valid Application is being processed by you.

Telina Webb

On 8 Apr 2019, at 2:39 pm, Holly Jamadar  
<[Holly.Jamadar@portstephens.nsw.gov.au](mailto:Holly.Jamadar@portstephens.nsw.gov.au)> wrote:

*Telephone enquiries  
Holly Jamadar  
P: (02) 4980 0406  
Please quote file no:  
PSC2019-00702*

Ms Telina Webb

By email – [draftcom@bigpond.com](mailto:draftcom@bigpond.com)

Dear Ms Webb

**FORMAL REQUEST**

Please find attached Council's letter of today's date regarding the validity of your application. The letter advises that Council does not have enough information from you as is reasonably necessary to process the application. As noted in the letter, you have until 12 April 2019 to provide any additional information which may assist in identifying the information you are seeking.

Please let me know if you have any questions or concerns.

Yours faithfully

<[image001.png](#)>

**Holly Jamadar**  
Governance Officer

---

p 02 4988 0406 | w [portstephens.nsw.gov.au](http://portstephens.nsw.gov.au)

<[image002.jpg](#)> <[image003.jpg](#)> <[image004.jpg](#)> <[image005.jpg](#)>

<[image006.jpg](#)>

\*\*\*\*\* Confidentiality and Disclaimer Statement

This email and any attachments are intended for the named recipient only and may contain private, confidential or legally privileged information as well as copyright material. Port Stephens Council does not waive any client legal privilege attaching to this email. The information must not be copied, printed, distributed or adapted without Council's consent. If you are not the intended recipient you must not reproduce or distribute any part of this email, disclose its contents to any other party, or take any action in reliance on it. If you have received this email in error, please contact the sender immediately and delete the message from your computer.

This email does not constitute a representation by the Port Stephens Council unless the author is legally entitled to do so. Any email message sent or received by Port Stephens Council may need to be disclosed by the Council under the provisions of the Government Information (Public Access) Act 2009 (NSW). Any email message sent or received by Council may be saved in Council's Electronic Document Management System.

This email and any attachments have been virus scanned however Port Stephens Council does not represent or warrant that this communication is secure and free from computer viruses or other defects and will not affect your computer. No liability is accepted for any loss or damage resulting from a computer virus, or resulting from a delay or defect in transmission of this email or any attached file. This notice should not be amended or deleted.

<[PSC-PRT01\\_PSC-PRT51\\_1669\\_001.pdf](#)>



**PORT STEPHENS**  
COUNCIL

Ms Telina Webb

By email – [Draftcom@bigpond.com](mailto:Draftcom@bigpond.com)

Dear Ms Webb

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

Council's decision in this matter is attached.

Yours faithfully

**Holly Jamadar**  
**Governance Officer / Right to Information Officer**  
16 April 2019

Telephone enquiries  
(02) 4980 0406  
Please quote file no: PSC2019-00702  
IPC Reference no: POR000143

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

**Phone:** 02 4980 0255  
**Email:** [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

**www.portstephens.nsw.gov.au**  
**ABN** 16 744 377 876  
1331

*Page 1*

*Government Information (Public Access) Act 2009*

**NOTICE OF DECISION**

Applicant:	<b>Telina Webb</b>
File Ref:	<b>PSC2019-00702</b>
Decision maker:	<b>Holly Jamadar – Governance Officer</b>
Date of decision:	<b>16 April 2019</b>

**Table of Contents**

Table of Contents ..... 1

1. Summary of access application ..... 2

2. Decision ..... 2

3. Searches for information and Consultation ..... 2

4. Review rights and Disclosure log ..... 3

5. Further information ..... 4

6. Table of Processing Charges

## 1. Summary of access application

On 21 March 2019, we received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). You asked for the following information:

**"Full & Unedited copy of recording – 20<sup>th</sup> April 2018. Reference is made to the NCAT Appeal Panel Hearing of 20<sup>th</sup> April 2018. I formally request a full and unedited copy of the recording disclosed by Carlo Zoppo during those proceedings."**

**I note a letter was sent to you on 21 March 2019 requesting clarification regarding the scope of your application. Subsequent requests for clarification were issued on 22 March 2019, 29 March 2019 and 8 April 2019.**

**I further note that you amended your scope on 8 April 2019 to include: "An unedited copy of the documents referred to by Carlo Zoppo during the Hearing of 20<sup>th</sup> April 2018, documents he referred to at the same time as the recording."**

## 2. Decision

I firstly note section 41 of the GIPA Act which outlines the conditions that must be satisfied in order for an application to be initially deemed valid. I make specific reference to section 41 (1) (e) that provides an application *"...must include such information as is reasonably necessary to enable the government information applied for to be identified"*.

I then acknowledge that an acknowledgement letter was sent to you on 21 March 2019 advising your application was valid. I however now refer you to section 51 (4) of the GIPA Act that states *"Acknowledging receipt of an application as a valid access application does not prevent the agency from subsequently deciding that the application is not a valid access application"*.

Section 52 of the GIPA Act provides that Council must assist you in amending your application in attempt to make the application valid. I note these attempts were made on 22 March 2019, 29 March 2019 and 8 April 2019.

After multiple attempts to ascertain the information you have requested, I have determined your application is invalid and therefore cannot be processed under the GIPA Act. It is my determination that you have not provided enough information as is reasonably necessary for Council to identify the information you are seeking.

This application is therefore invalid.

You can ask for a review of this decision. For details about how to do so, see part 9 of this Notice.

## 3. Searches for information and Consultation

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.

Firstly I consulted with Tony Wickham and Lisa Marshall in respect to this application to ascertain if they knew what the recording was that was referred to during the proceedings. They both advised that without

a transcript or a recording of the proceedings of 20 April 2018 they are unable to identify what recording was being referred to. Carlo Zoppo, Council's legal representative who was also mentioned on the application form also advised he too could not remember what recording (if any) was referred to and again, without a recording of the proceedings would not be able to provide additional information to assist with the request. He did note that the proceedings referred to were roughly 12 months ago therefore some time has lapsed since the proceedings contributing to an unreasonable expectation of recollection involving comments/statements made to the Tribunal.

You were asked to provide any additional information that would assist Council in locating the information however the limited information provided could not assist in identifying what recording was being referred to. You openly stated in your email of 22 March at 11:51am that "I am actually unsure of the nature of the recording" and again in your email of 29 March 2019 at 12:52pm "Clearly if I knew exactly what the recording was I'd not be asking for it". You also advised that you were unable to provide any additional information as any such information provided would purely be based on speculation as you did not know the nature or content of the information you were seeking.

I therefore do not believe enough information was provided to assist Council in processing your application. You advised that a comment was made during Tribunal proceedings and identified the officers who were in attendance at the Tribunal. I consulted with all 3 to which none were able to provide any insight therefore I am not aware of the recording you are seeking.

I note that Council does not have a recording of the proceedings on file nor were any recordings provided to me to assist in this request.

#### **4. Review rights, Processing charges and Disclosure log**

As no decision regarding your application has been made I have decided not to include your application on Council's disclosure log.

I note section 52 (5) of the GIPA Act provides that you are entitled to a refund of your application fee due to the application being deemed to be invalid. Please contact Council on 49880255 to arrange for this to be made.

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](http://www.ipc.nsw.gov.au).

Notice of Decision

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

## 5. Further information

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

**Jamadar**, on 49880406.

A handwritten signature in black ink, appearing to be 'Holly Jamadar', written over a horizontal dotted line. The signature is stylized and cursive.

Holly Jamadar

**Governance Officer – Right to Information Officer**

<b>LOG OF ACTIONS PERFORMED</b>		
<b>Date</b>	<b>Action</b>	<b>Time Taken (Hrs)</b>
19.3.19	Receipt of application.	0.25
21.3.19	Receipt raised	0.25
21.3.19	Scanned and set up new container.	0.25
21.3.19	Logged request on IPC website.	0.25
21.3.19	Acknowledgement letter was finalised and posted to Applicant.	0.25
<b>21.3.19</b>	<b>Initial consultation with key stakeholder staff</b>	<b>0.5</b>
<b>21.3.19</b>	<b>Clarification of scope issued and received response</b>	<b>0.25</b>
<b>21.3.19</b>	<b>Review of electronic file to ascertain if a copy of recording was saved</b>	<b>0.25</b>
<b>25.3.19</b>	<b>Consultation with Carlo Zoppo</b>	<b>0.5</b>
<b>29.3.19</b>	<b>Clarification requested from applicant and received response</b>	<b>0.25</b>
<b>1.4.19</b>	<b>Further consultation with key stakeholder staff</b>	<b>0.25</b>
<b>8.4.19</b>	<b>Letter sent advising validity of application. Further dialogue with applicant trying to receive information to assist in processing application. Amended scope provided</b>	<b>0.5</b>
	Total hours	<b>3.75</b>



## Your review rights under the GIPA Act

## Fact sheet

August 2018

The right to information system in NSW aims to foster responsible and representative government that is open, fair and effective.

You have the right to request a review of certain decisions<sup>1</sup> made by government agencies about the release of information under the *Government Information (Public Access) Act 2009* (GIPA Act):

- a) a decision that an application is not a valid access application
- b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- d) a decision to provide access or to refuse to provide access to information in response to an access application
- e) a decision that government information is not held by the agency
- f) a decision that information applied for is already available to the applicant
- g) a decision to refuse to confirm or deny that information is held by the agency
- h) a decision to defer the provision of access to information in response to an access application
- i) a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- j) a decision to impose a processing charge or to require an advance deposit,
- k) a decision to refuse a reduction in a processing charge
- l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- m) a decision to include information in a disclosure log despite an objection by the authorised objector

(or a decision that the authorised objector was not entitled to object).

You generally have three review options.

### 1. Internal review

You have **20 working days**<sup>2</sup> after the notice of a decision has been given to you, to ask for an internal review by the agency that made the decision. An agency may accept an application for internal review out of time, but is not obliged to do so.<sup>3</sup>

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review<sup>4</sup>, but you can ask for an external review.

Similarly, if the access applicant or one of a number of third parties has sought an internal review of the decision that you are not satisfied with, you are not entitled to seek an internal review of the decision. You are however able to seek an external review.

The review must be carried out by an officer who is no less senior than the person who made the original decision.<sup>5</sup> The review decision must be made as if it was a fresh application.<sup>6</sup>

There is a \$40 fee for an internal review application. An agency may choose to waive the internal review fee.<sup>7</sup> No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time<sup>8</sup> or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under section 93 of the GIPA Act.<sup>9</sup> In this case, you cannot be charged any review fee.

The agency must acknowledge your application within **five** working days of receiving it.<sup>10</sup> The agency must decide the internal review within **15** working days<sup>11</sup> (this can be extended by **10** working days if the agency has

<sup>2</sup> Section 83(1) GIPA Act

<sup>3</sup> Section 83(2) GIPA Act

<sup>4</sup> Section 82(2) GIPA Act

<sup>5</sup> Section 84(2) GIPA Act

<sup>6</sup> Section 84(1) GIPA Act

<sup>7</sup> Section 127 GIPA Act

<sup>8</sup> Section 85(2) GIPA Act

<sup>9</sup> Section 93(6) GIPA Act

<sup>10</sup> Section 83(3) GIPA Act

<sup>11</sup> Section 86(1) GIPA Act

<sup>1</sup> Section 80 GIPA Act

to consult with a third party not previously consulted<sup>12</sup>, or by agreement with you<sup>13</sup>).

### What is a working day?

A working day is defined as any day that is not a Saturday, a Sunday or a public holiday.<sup>14</sup>

The close down for Christmas/ New Year is not excluded from the meaning of working day, so that only those days in the close down period that are Saturdays, Sundays or public holidays are excluded from working days for the purposes of calculating time in the GIPA Act.

### What do the words 'given to' mean?

A recent Tribunal decision, *Choi v University of Technology Sydney* [2017] NSWCATAD 198 considered the meaning of the words 'given to' in looking at whether an application for internal review had been made within time.

The question before the Tribunal in *Choi* was about giving a notice of decision by email however the Tribunal in looking at the words "given to" also looked at decisions being given to a person by post.

In *Choi*, at [23], the Tribunal's reasoning was that the words "given to" have their ordinary meaning of "delivered" or "handed over".

The Tribunal in *Choi* at [24] to [25] also referred to previous decisions of Tribunals which considered the question of when a decision may be given to a party by posting a letter, served by post, which is when the letter would be delivered in the ordinary course of the post, unless it can be proved otherwise.

The Tribunal in *Choi* found that the notice was given to the applicant when it was received by email.

The Tribunal observed that the email notice was sent by the agency to the Applicant and there was no dispute that the email was received. In those circumstances the Tribunal could not be satisfied that there was a reasonable excuse for the Applicant's delay in lodging a request for administrative review to the Tribunal.

### What is service by post?

Section 76 of the *Interpretation Act 1987* provides that:

- (1) If an Act or instrument authorises or requires any document to be served by post (whether the word "serve", "give" or "send" or any other word is used), service of the document:

- (a) may be effected by properly addressing, prepaying and posting a letter containing the document, and
- (b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth working day after the letter was posted, and
- (c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of post.

## 2. External review by the Information Commissioner

If you disagree with any of the decisions listed above, you can ask for a review by the Information Commissioner.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the Information Commissioner to review it.<sup>15</sup>

If you are not the access applicant, you **must** seek an internal review before applying for review by the Information Commissioner. However, if an internal review cannot be sought (if a Minister or their personal staff, or the principal officer of an agency made the decision), you can seek a review by the Information Commissioner.<sup>16</sup>

You have **40 working days**<sup>17</sup> from being notified of the decision to ask for a review by the Information Commissioner.

There is not a provision in the GIPA Act that enables the Information Commissioner to accept applications out of time. On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

**Note:** You cannot ask the Information Commissioner to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal (NCAT)<sup>18</sup>.

## 3. External review by the NSW Civil and Administrative Tribunal (NCAT)

If you disagree with any of the decisions listed above, you can ask for a review by NCAT. You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by NCAT.

<sup>12</sup> Section 86(2) GIPA Act; IPC Fact Sheet [Why consult third parties; Guideline 5 Consultation on the public interest considerations](#)

<sup>13</sup> Section 86(4) GIPA Act

<sup>14</sup> Clause 1, Schedule 4 to the GIPA Act

<sup>15</sup> Section 89 (2)(a) GIPA Act

<sup>16</sup> Section 89 (2)(b) GIPA Act

<sup>17</sup> Section 90 GIPA Act

<sup>18</sup> Section 98 GIPA Act

You have **40 working days**<sup>19</sup> from being notified of the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days**<sup>20</sup> from being notified of the Information Commissioner's review outcome to apply to NCAT.

## For more information

Contact the Information and Privacy Commission  
NSW (IPC):

Freecall: 1800 472 679

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

Website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

---

<sup>19</sup> Section 101(1) GIPA Act

<sup>20</sup> Section 101(2) GIPA Act