

Our Ref: GIPA24/4341

5 December 2024

Telina Webb
NSW Freedom of Information
PO BOX 8030
MARKS POINT NSW 2280

By email only: info@nswfreedomofinformation.net

**Notice of decision under the
Government Information (Public Access) Act 2009**

Dear Ms Webb,

I refer to your access application under the *Government Information (Public Access) Act 2009* (GIPA Act) received by the Department of Communities and Justice (the Department) on 25 October 2024.

You requested the following information:

Ref – Review of GIPA Act 2009 undertaken in 2014:

- 1. Unedited copy of TRIM/EDRMS/HPRM8 (or other electronic data and record management system) FILE – All generated records (absent external submissions) inclusive of internal records, memos, meeting notes, reports and recommendations, responses.*
- 2. Committee List nominated for GIPA Review*

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

The Department can refuse to deal with an access application under section 60(1)(a) of the GIPA Act if dealing with the application would require an unreasonable and substantial diversion of resources. However, section 60(4) of the GIPA Act requires the Department to provide a reasonable opportunity for an applicant to amend the application.

On 8 November 2024, I wrote to you indicating that the Department had identified a **minimum** of 3,279 pages that may be relevant to your access application. To process the application in its current form, the Department will need to amongst other things, review all the pages before making any decisions as to whether to refuse or provide access to the information. In my correspondence dated 8 November 2024, I offered you a reasonable opportunity to amend the application and included suggestions on how you could amend your application. I also invited you to contact me should you have any questions or require further assistance in reducing the scope of your application.

As at the date of this decision, you have not responded to this correspondence. I note that you have also applied to the Information and Privacy Commission for a review of the request to amend even though the Department has not made a reviewable decision under section 80 of the GIPA Act. I have

OFFICIAL: Sensitive - Personal

taken this to mean that you have no intention to reduce the scope of your application. Accordingly, I have decided to refuse to deal with the application under section 60(1)(a) of the GIPA Act.

Estimated time

The work required to decide this application includes locating the information requested, converting the files to readable format, reviewing relevant records, weighing up the balance of public interest factors and making a decision about release. It will also include work to redact parts of the records or to consult with third parties.

The time required to process the application has been estimated to be **at a minimum, 190 hours** and is set out in the following table.

Time spent to date	Hours
Consider the terms of the application to determine the relevant business units within the Department likely to hold the requested information.	1 hr
Undertake preliminary searches for the information that may fall within the scope of your request on the Department's information technology systems and request information	4 hrs
Tasks to be carried out	
Review information in response to your application for public interest considerations against disclosure and any consultation requirement, including marking for redaction and preparing records to provide access by way of copy/email (a minimum of 3,279 number of pages located calculated at 3 mins per page).	Min 164 hrs
Consultation with third parties including drafting letter to third party for the purpose of consultation and preparing documentation for third party comments (1-2 hours per consultation). A minimum of eight third parties have been identified within the first 10 subfolders.	Min 16 hours
Weighing the balance of public interest factors, making a decision about access and writing a notice of decision.	5 hours
TOTAL	Min 190 hours

Decision

I have decided to refuse to deal with the access application on the basis that doing so would require an unreasonable and substantial diversion of the Department's resources, pursuant to section 60(1)(a) of the GIPA. This is a reviewable decision pursuant to section 80(c) of the GIPA Act.

In forming this view, and in accordance with section 60(3A) of the GIPA Act, I have taken into account the following considerations:

- (a) the estimated volume of information involved in the request,
- (b) the Department's size and resources, and
- (c) the decision period under section 57.

Section 60(3B) requires the above matters to be balanced against the general public interest in favour of disclosure and the demonstrable importance of the information to the applicant.

Volume of information

The estimated volume of the information involved in the request is significant and would require review and assessment for public interest considerations against disclosure. The substantial use of resources in respect of access to the information sought arises not purely as a consequence of the breadth of the request but also as a consequence of the nature of the records sought.

The nature of the information sought requires reviewing each page to identify any public interest considerations against disclosure and would take at **a minimum** 164 hours. A majority of the information contains information from third party agencies. The Department would also need to undertake third party consultation with each of the agencies before making a decision about access to their information.

This time estimate does not include reviewing information in the remaining 20 subfolders identified as relevant to item 1 of your application and item 2 of your application.

The Department's size and resources

While the Department has a dedicated business unit to consider applications for information, the volume of applications the Department receives is large. The Department receives approximately 5561 GIPA applications under the GIPA Act every year.

The dedicated unit that handles formal access applications is also responsible for managing the response to approximately 3649 and statutory orders issued to the Department in 2023 as well handling applications under the National Redress Scheme for Institutional Child Sexual Abuse, privacy complaints, privacy internal reviews, managing and providing advice in response to data breaches under the Mandatory Notification of Data Breach Scheme, and access and amendment applications under the *Privacy and Personal Information Protection Act 1998*. The scarce resources of this unit are unable to be diverted to respond to a single access application where the size of the application is such that it will cause a substantial diversion of its resources and would be inherently unfair to other access applicants whose applications may be delayed due to such an unreasonable diversion of resources.

The decision period

In accordance with section 57(1) of the GIPA Act, the Department must decide the application within 20 working days of receipt of the application.

In *Colefax v Department of Education and Communities (NSW) (No 2) [2013] NSWADT 130*, the Tribunal compared the estimated time which would be required to answer the access application with the time allowed by the GIPA Act for processing the application, which it held was 20 seven hour days.

The **minimum** time likely to be taken by one officer in processing this access application would be 27 seven-hour days. The significant time involved in considering your application would affect the Department's capacity to process other access applications received, within the statutory timeframe.

Balancing the public interest

I have apportioned a minimal level of weight to the factors in section 60(3B) noting the general public interest in favour of disclosure of government information and observe that all of the information sought by your application is not your personal information. While some of the information you have requested could reasonably be expected to inform the public about the statutory GIPA Act review, there is a publicly available report on the NSW Parliament's website regarding the statutory review

at

<https://www.parliament.nsw.gov.au/tp/files/71582/GIPA%20Act%20and%20GIIIC%20Act%20statutory%20review.pdf>.

The demonstrable importance of the information is not apparent from the terms of your request or accompanying documentation which contain false and defamatory statements we perceive to be made about OGIP staff.

I have apportioned significant weight to the factors in section 60(3A) as the application as it stands, would require a substantial and unreasonable diversion of the resources of the Department given the volume of the information involved and the Department's size and resources as well as the effect the decision period would have on determining the application.

Accordingly, in accordance with section 60(3B), I am satisfied the considerations under section 60(3A) of the GIPA Act outweigh the considerations in section 60(3B).

The GIPA Act requires that it be interpreted and applied so as to further its objects of making government information accessible to the public, promptly and at the lowest reasonable cost. The public interest in removing a staff member for an extensive period to decide one application is limited due to the impact it would have on staff resources and the furtherance of the objects of the GIPA Act.

For these reasons, I have decided to refuse to deal with your access application on the grounds that under section 60(1)(a) of the GIPA Act, dealing with the application would require an unreasonable and substantial diversion of resources.

Review rights

If you disagree with the decision in this notice that is reviewable, you may seek a review under Part 5 of the GIPA Act. 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 the NCAT.

Further information about your review rights can be located on the Information and Privacy Commission's website at <https://www.ipc.nsw.gov.au/fact-sheet/your-review-rights-under-gipa-act>. If you have any questions about this notice or would like any further information, please contact me and quote the reference number GIPA24/4341.

Sincerely,

Jordan

Open Government, Information and Privacy | Legal
Department of Communities and Justice