

Ms Telina Webb  
DraftCom Pty Ltd t/as NSW Freedom of Information  
PO Box 8030  
MARKS POINT NSW 2280

By email to: [info@nswfreedomofinformation.net](mailto:info@nswfreedomofinformation.net)

---

Re: Your request for information under the Government  
Information (Public Access) Act 2009

5 October 2022

Ref: GIPA22/4424

Dear Ms Webb,

**Formal Access Application - Notice of Decision**

I refer to your Formal Access Application under the *Government Information (Public Access) Act 2009* (GIPA Act) received by the Department of Communities and Justice ('Department') on 5 September 2022 where you requested access to a copy of the following information:

*"A full and unredacted copy of the presentation which may be titled "Dealing with Difficult Applicants" made by Justice NSW/Department of Justice to the NSW Right to Information and Privacy Practitioners Network (NIPPN) on Wednesday 27 March 2019, 09:40am."*

In our acknowledgement email dated 5 September 2022, you were advised that the decision period for your application was 4 October 2022. Due to the subsequently declared National Day of Mourning for Her Majesty the Queen on 22 September 2022, the due date for deciding your application was changed to 5 October 2022.

### **Searches for information**

The Department is required by section 53 of the GIPA Act to conduct reasonable searches for information applied for in an access application.

Searches for the information in your scope were conducted with the Director of the Open Government Information and Privacy Unit within DCJ Legal.

I am satisfied that reasonable searches have been undertaken in relation to the information sought in your application.

### **Summary of Decision**

<b>Page no</b>	<b>Document</b>	<b>Summary of decision and relevant public interest consideration against disclosure</b>
1 - 12	<i>Presentation titled "Tale of a fixated applicant" made by Department of Justice to the NSW to the Right to Information and Privacy Practitioners Network (NIPPN) on Wednesday 27 March 2019 at approximately 09:40am."</i>	Withheld in part- Clause 1(f) and 2(d) of the table at section 14 of the GIPA Act

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 pursuant to section 58(1)(a) of the GIPA Act to provide access to some of the information you have requested.

I have decided pursuant to section 58(1)(d) of the GIPA Act to refuse to provide access to some of the information you have requested because there is an overriding public interest against disclosure of the information.

This is a reviewable decision under section 80(d) of the Act.

### **Reasons for Decision**

An applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information (section 9(1) of the GIPA Act). The public interest balancing test for determining whether there is an overriding public interest against disclosure 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;
- (c) attribute weight to each consideration for and against disclosure; and
- (d) deciding where the balance between them lies.

### **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.

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

- The general public interest in favour of the disclosure of government information; and;
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

### **Consideration of personal factors of application**

Section 55 (1) of the GIPA Act provides that in determining whether there is an overriding public interest against disclosure of information in response to an access application, an agency is entitled to take the following factors (the personal factors of the application) into account:

- (a) the applicant's identity and relationship with any other person,
- (b) the applicant's motives for making the access application, and
- (c) any other factors particular to the applicant.

Section 55(2) provides that the personal factors of the application can be taken into account as factors in favour of providing the applicant with access to the information.

Section 55 (3) provides that the personal factors of the application can be taken into account as factors against providing access if (and only to the extent that) those factors are relevant to the agency's consideration of whether the disclosure of the information concerned could reasonably be expected to have any of the effects referred to in clauses 2–5 (but not clause 1, 6 or 7) of the Table to section 14.

In October 2021 the Applicant provided the Department with a media release about a website 'NSW Freedom of Information.'

The website 'NSW Freedom of Information,' as at 4 October 2022 is publicly available and accessible through the following internet address: <https://nswfreedomofinformation.net/>. The NSW Freedom of Information website lists on its home page that it is a "community service to support the public in accessing NSW Government Information."

The NSW Freedom of Information website has a specific page which is titled 'About the Site Administrator' which provides information about the Applicant Ms Telina Webb and describes Ms Webb as "a freedom of information advocate." This page is accessible through the following internet address: <https://nswfreedomofinformation.net/site-administrator/>

The NSW Freedom of Information website has a dropdown menu with options including 'Forum' which is an open forum for members of the public to make contributions to the website including 'rate your agency' where a number of GIPA applicants have written of their perceptions of their experiences with various government agencies related to the handling of GIPA applications.

It is clear that the Applicant is the site Administrator of a publicly available website that publishes information about the GIPA Act and applicants dealing with government agencies in seeking access to information. It is also apparent to the Department through Court and Tribunal matters and content on the website that the Applicant is known to and/or has a relationship with various other GIPA applicants.

It is reasonable to adduce that the Applicant's motives for seeking the information subject to this application is to publish the information sought on the NSW Freedom of Information website or to otherwise distribute the information to an audience of GIPA applicants. Any release of information in response to an access application under the GIPA Act, is a release to the world at large, without conditions or limitations. As such in considering this Applicant's access application I have taken into account the very real and likely possibility that the information released may be made available on this website as a resource for other members of the community.

### **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.

I have identified the following considerations against disclosure as being relevant to our application:

- Disclosure of the information could reasonably be expected to prejudice the effective exercise by an agency of the agency's functions (clause 1(f) in the Table at section 14 of the GIPA Act), and
- Disclosure of the information could reasonably be expected to endanger or prejudice any system or procedure for protecting the life, health or safety of any person (clause 2(d) in the Table at section 14 of the GIPA Act), and

I will now discuss these public interest considerations against disclosure in more detail below.

***Prejudice the effective exercise by an agency of the agency's functions – clause 1(f)***

Clause 1(f) of the table at section 14 as a public interest consideration against disclosure states:

*“There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to prejudice the effective exercise by an agency of the agency's functions.”*

In order for this to be a relevant consideration against disclosure, I must demonstrate:

- The relevant function of the agency, and
- How the agency would be prejudiced by release of the information.

The meaning of the word 'prejudice' is to cause detriment or disadvantage.

The PowerPoint slides under consideration for release was a presentation made to the NSW Right to Information and Privacy Practitioners' Network ('Network') on 27 March 2019 by Jodie Cobbin the Director of the Open Government Information and Privacy ('OGIP') Unit of the Department of Communities and Justice, Legal.

The Network consists of practitioners who carry out functions or have responsibility for compliance with the GIPA Act, the *Privacy and Personal Information Protection Act 1998*, and the *Health Records and Information Protection Act 2002* in the NSW public sector.

The Network consists of currently employed members from government agencies, health services, local government, State Owned Corporations, and universities. It meets quarterly and the agenda generally includes presentations, feedback from the Practitioners' Consultative Committee, reports on recent cases, legislative and other developments and guest speakers.

The information contained in the presentation can broadly be described as observed behaviours of fixated and unreasonable applicants and strategies used by the Department of Communities and Justice (at the time known as the Department of Justice) in managing such applicants in the context of the Department's GIPA and PPIP Act functions. The purpose of the presentation was to inform public sector employees who form part of the Network on how to identify fixated behaviours and to provide suggested management strategies.

An agency's functions or activities can be determined from a number of sources, including authorising legislation, ministerial delegations and legislative or procedural requirements. The OGIP Unit is responsible for processing access applications made to the Department by members of the public under the *Government Information Public Access Act 2009* (GIPA Act).

Staff within the OGIP Unit of the Department are regularly subject to unreasonable and persistent correspondence and abusive communication from unreasonable and fixated applicants. Staff within the Department, responding to access applications can also be the subject of spurious allegations.

The Department has positive obligations to protect its workers from risks to their health and safety under the *Work Health and Safety Act 2011* ('WHS Act'), and those obligations extend to managing the impact of unreasonable behaviour from fixated applicants.

The OGIP Unit is a workplace subject to the WHS Act. The objects of the WHS Act are set out in section 3 and specifically provide at section 3(a) for "*protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work...*".

Section 19(1) of the WHS Act titled 'Primary Duty of Care' provides that the Department must ensure, so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged, by the Department. This is a duty of care on the Department to ensure the safety of its staff when they are performing the duties or functions for which the worker was engaged or caused to be engaged by the Department.

It follows that the Department's functions include discharging the duty of care imposed on it by section 3 of the WHS Act "to ensure as far as reasonably practicable, the health and safety of workers..." In the WHS Act Health means physical and psychological health.

While for this public interest consideration I cannot take into account any personal factors of the applicant (see section 55(3)), I have taken into account the fact that releasing the withheld information via an access application under the GIPA Act is effectively releasing information to the world at large because conditions cannot be placed on its release (section 73(1) of the GIPA Act).

Disclosing the full presentation to the world at large would prejudice the OGIP Units' functions (and the functions of other government agencies who may have adopted the strategies from the presentation) in protecting staff against harm to their health, safety and welfare through the elimination or minimisation of risks arising from managing unreasonable and fixated clients. This is because if the information redacted in the presentation, including observed behaviours of persistent, unreasonable and fixated clients and strategies used to minimise those behaviours was released to the world at large, this would provide sufficient information for such persons to circumvent those suggested strategies.

I have apportioned significant weight to this public interest consideration against

disclosure as the detriment to the Department by the supply of the full presentation would significantly prejudice the effective exercise of the Department's functions under the WHS Act in protecting workers against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

**Endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person – Clause 2(d)**

Clause 2(d) of the table at section 14 states:

*“There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person (whether in a particular case or generally).”*

The meaning of the word prejudice is to “cause detriment or disadvantage.”

To show that this is a relevant consideration against disclosure, the Agency must establish that disclosure of the information could reasonably be expected to:

- (a) endanger the life, health or safety of any person; or
- (b) prejudice any system or procedure for protecting the life, health or safety of any person.

The OGIP Unit of the Department has a framework which is a system/procedure for risk managing and dealing with fixated and unreasonable clients which is summarised in the redacted parts of the presentation. The procedure is a one which enables the OGIP unit to identify and respond to situations that pose a risk to the health and safety of public sector employees dealing with unreasonable and fixated clients. The procedure provides guidance on identification of the behaviour, strategies to minimise impact on staff health, methods of internal escalation and points of support. To release the presentation to the world at large would prejudice that procedure which is in place to protect the health and safety of OGIP staff which would in turn endanger the health and safety of staff.

I have taken into account the high likelihood of the Applicant publishing the presentation on the NSW Freedom of Information website (or distributing the information to other GIPA applicants). I have reached that conclusion by reviewing the website which contains a number of examples of published outcomes of GIPA applications and agency staff names. Staff of the OGIP Unit have a reasonable expectation that their names will likely be published on the NSW Freedom of Information website by the Applicant.

I have also taken into account the Applicant's previous unreasonable behaviour noted by the Tribunal's Appeal Panel in *Webb v Port Stephens Council*; *Webb v Port Stephens Council*; *Port Stephens Council v Webb* [2020] NSWCATAD 81, in which the Appeal Panel observed at [43] to [45] as follows:

*“43. I have set out earlier a brief history of communications between Ms Webb and the Council following the publication of the orders of Senior Member*

*Hamilton. There was a period of 49 days between publication of the orders and the filing of this application. During this period Ms Webb communicated with the Council on 10 occasions. The orders required the Council to further consider the documents in question, to determine the extent to which they should be redacted, and to write and advise persons who had objected to the release of information about the decision and that if aggrieved, they had a right to have the decision reviewed.*

*44. The insistence of Ms Webb that all of these matters should have been attended to much earlier, her persistent and consistent complaints to Council, her seemingly inability to assess in a more objective fashion what was involved in compliance by Council with the orders all create a sense of unreality about her conduct in commencing this application.*

*It is possible that she may not have understood that viewed objectively her conduct had the effect of causing annoyance to and harassment of Council personnel, as is clear from the evidence of Mr Wickham. In addition, the filing of this application was but one of many steps taken by Ms Webb in the pursuit of what she perceived to be her absolute unfettered entitlement to seek access to documentation under the GIPA Act.*

*And these matters need to be considered in the context of the overall purpose of Ms Webb in seeking this information and by doing so engaging in this habitual and persistent conduct designed to understand why certain neighbours might have objected to the privacy screen, and to ascertain their identity.”*

It is not fanciful or contrived to reasonably expect that release of the full presentation to the Applicant and to the world at large would prejudice the procedures implemented for managing fixated and unreasonable clients as a mechanism to protect the health or safety of OGIP Unit staff. As outlined above in respect of clause 1(f), the Department has positive duties to protect the health and safety of its staff. It follows that procedures for upholding this duty to its staff should not be compromised to the extent that those procedures are disclosed to the world at large, including to the class of persons against whom the health and safety of staff is intended to be protected.

I have apportioned significant weight to this public interest consideration against disclosure as the detriment to the Department by the supply of the full presentation would significantly prejudice the procedure put in place by the OGIP Unit for protecting the health or safety of staff and in turn endanger the health or safety of those staff.

### **Balancing the public interest considerations**

I have considered the relevant public interest considerations in favour of and against disclosure of the information you have requested.

I have attributed some weight to the general public interest in favour of disclosing government information. I have placed heavy weight on the public interest consideration in favour of disclosure that the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

Sections 55 (2) and (3) (as noted above) allows me to take into account the Applicant's relationship with any other person, the Applicant's motives for making the access application, and any other factors particular to the applicant as both factors in favour of providing the applicant with access to the information and as factors against providing access as that factor is relevant to the public interest consideration against disclosure at clause 2(d) of the Table to section 14.

I have given very little weight to the personal factors in favour of disclosure including that the information would be published on the website in which the Applicant is a site administrator (or otherwise circulated to GIPA applicants). This is because none of the redacted information would assist in enforcing a person's right to access information under the GIPA Act nor is any information relevant to promoting the objects of the GIPA Act. The information withheld is restricted only to the behaviours of a small cohort of fixated and unreasonable clients and strategies that are adopted by the Department's OGIP Unit in managing such clients for the purpose of fulfilling the Departments obligations under the WHS Act.

It is clear that the Applicant is known to and/or has a relationship with various other GIPA applicants and a highly likely motive for the Applicant seeking access to the information is to publish it on the NSW Freedom of Information website or to otherwise distribute the information to an audience of GIPA applicants. I have applied some weight to the Applicant's personal factors as relevant to the public interest consideration against disclosure at clause 2(d) of the Table to section 14 as there is a very real and likely possibility that the information released may be made available on this website as a resource for other members of the community.

I have however, identified concerns against the release of some of the information requested by the Applicant. I have identified and given very heavy weight to the consideration that the release of this information could reasonably prejudice the effective exercise of the Department's functions, being the Department's obligations under the WHS Act to provide a safe workplace.

I have further identified that the release of this information could reasonably prejudice the procedure for protecting the life, health or safety of any person, being a procedure to protect the health and safety of OGIP Team members.

On balance, I find that there is an overriding public interest against the disclosure of some of the information the Applicant has requested. This information has been redacted from the presentation.

### **Your review rights**

If you disagree with my decision, you may apply for this decision to be reviewed by seeking:

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

You have 20 working days from the date of this letter to apply for an internal review and 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT.

Please find enclosed a document outlining your review rights under the GIPA Act.

I can be contacted at [infoandprivacy@justice.nsw.gov.au](mailto:infoandprivacy@justice.nsw.gov.au) if you have any questions about my decision.

Yours sincerely,

Jordan Creyson

Right to Information Officer  
Open Government, Information and Privacy  
Department of Communities and Justice

.