

## Tony Wickham

**From:** Tony Wickham <Tony.Wickham@portstephens.nsw.gov.au>  
**Sent:** Tuesday, 17 March 2015 4:30 PM  
**Subject:** INFORMATION AND PRIVACY COMMISSION: RESPONSE TO A COMPLAINT FROM PAUL MC EWAN  
**Attachments:** Email February 2015.pdf; Mr McEwan's informal application.pdf; Previous formal applications.pdf

Information Commissioner  
Information and Privacy Commission NSW

ATTN: Kathryn Luis  
By email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

Dear Ms Luis

INFORMAL APPLICATION  
GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA)

I refer to the Commission's letter of 9 March 2015, received by Council on 11 March 2015 concerning a complaint lodge by Paul McEwan.

Council did consider Mr McEwan's informal application and a response was provided by email on 16 February 2015 at 4.23pm. It is acknowledge that the response did advise that the information would not be release, however Council did deal with the informal application in accordance with clause 8 of the GIPA Act. Council's email of 19 February 2015 at 12.21pm, referred Mr McEwan to his partner's previous application and stated that the same outcome would apply. This was provided to save Mr McEwan the time and cost involved with another formal application.

Please find attached Mr McEwan's informal application under GIPA, as requested.

Also, I have attached the email correspondence between Mr McEwan and Council's Ms Coburn between the dates of 16 February and 19 February 2015.

By way of background, the following information is provided to the Commission to enable the broader issues surrounding this matter to be considered.

The matter involves a compliance issue which was raised with Council's planning area sometime early 2011. Mr McEwan and his partner Ms Telina Webb were subject to enquiries by Council when it was brought to Council's attention that there may be a compliance issue at their property. After enquiries Council discovered that a privacy screen (a brick wall) had been constructed in the pool area of Mr McEwan's property without a development consent. The privacy screen was some 300mm above the requirements to be considered an exempt development.

Eventually, Mr McEwan was required to lodge a development application to seek approval for the development. Council followed the normal development application and advertising

processes which resulted in submissions being lodged objecting to the development. The development was refused by Council at the end of the day. The applicant (Mr McEwan) then pursued the matter through the Land and Environment Court where Orders by Consent were made.

Through the public exhibition period of the development application, Council was made aware of a number of neighbourhood issues – these involved Apprehended Violence Orders (AVO's) being issued, residents videoing people and the Police being called to the area. As a result of this information, Council sought to consult with the authors of the submissions when Ms Webb requested a copy. Council was not granted approval to release the submissions and after staff spending a large amount of time with the neighbours (where one person was in tears due to fear), Council was of the view that public safety was a concern in this instance. Council staff also were confronted with personal attacks during this period.

The development matter and Court case continued for over 2 years.

Council has considered eight (8) informal applications and four (4) formal applications over a period of 3 years from Ms Webb/Mr McEwan. I have attached the two formal determination where copies of the submissions were requested.

Whilst Council is aware that submissions are mandatory release under the GIPA Act, subject to some redaction occurring, Council was also mindful of the public safety issue that occurred from this development matter. This is why Council dealt with the submission in this manner. Council is still of the view that there is an overriding public safety issue against disclosure of these documents.

I can be contacted on (02) 49800187, if you require further information.

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**Tony Wickham**

Governance Manager/Public Officer



**Port Stephens Council**

Phone: 4980 0187 Mobile: 0408 497 649 Fax: 4983 1918

Email: [tony.wickham@portstephens.nsw.gov.au](mailto:tony.wickham@portstephens.nsw.gov.au)

Web: [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)