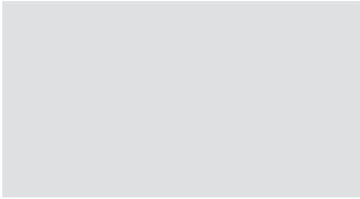




23 May 2024

Our ref: GIPA24  
24



By email:

Dear

## Formal Access Application - Notice of Decision

### Summary

1. (the Applicant) applied for information from the Department of Communities and Justice NSW (the Department) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. I have decided to release the information requested in the access application in full by creating a new record.
3. I have detailed the final calculations of the processing charges applied to the processing of this application.
4. I have provided information on how to seek a review of my decision is set out in paragraphs 39 to 44.

### Summary of access application

5. On 9 April 2024, the Applicant requested access to the following information under the GIPA Act:  
*"...I am seeking some information about dwellings offered to those on the public housing waitlist in the past five years. How often in the past five years has Housing offered a dwelling and the person has been deceased? And can I have a breakdown by year? How offered has a dwelling been offered and the person is incarcerated? Can I have a breakdown by year? How often in the past five years have dwellings been rejected because they are dilapidated? Can I have a breakdown by year?"*
6. On 12 April 2024, the Department acknowledged that your application was a valid access application and was due to be decided on or before 8 May 2024.
7. On 16 April 2024, by agreement between the applicant and the Department, the scope of the application was revised as follows:  
*"A copy of the following Housing information held by the NSW Department of Communities and Justice, for the period from 1 April 2019 to 31 March 2024:*
  1. *Data showing the number of Public Housing dwellings offered to a person who is deceased;*

2. *Data showing the number of Public Housing dwellings offered to a person who is incarcerated;*
3. *Data showing the number of Public Housing dwellings rejected due to dilapidation;*
4. *Data showing the number of people removed from the Public Housing waiting list after offer/s of Public Housing dwelling were rejected; and*
5. *Data showing the main reason/s that offers of Public Housing dwellings were rejected.”*
8. On 2 May 2024 the Department advised the applicant that processing charges were being imposed for the processing of this application and requested payment of the advance deposit.
9. On 10 May 2024, the applicant paid the advance deposit. The applicant was then advised by the Department that the application was required to be decided by 16 May 2024.
10. On 16 May 2024, the Department sought an extension of time to the due date of 5 working days.
11. On 17 May 2024, you provided your consent to the due date being extended to 23 May 2024.

## **Decision**

12. 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)(a) of the GIPA Act, to provide access to the information sought in your access application; and
  - Under section 75 of the GIPA Act, to provide access to items 1 to 5 of your access application by creating a new record.
13. My decision under s. 58(1)(a) is a reviewable decision under section 80(d) of the GIPA Act.
14. 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).

## **Searches for information**

15. In conducting searches for the information requested in your application, I have taken into account the obligations referred to in section 53 of the GIPA Act, which states:

### **53 Searches for information held by agency**

- (1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency's searches must be conducted using the most efficient means reasonably available to the agency.

(3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

(4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the *State Records Act 1998* or contrary to the agency's established record management procedures.

(5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources.

16. In accordance with the obligations outlined above, I liaised extensively with the Strategy, Policy & Commissioning ('SPC') Division of the Department, who provides policy and strategic support, and data analytic services, to the entire Department, as well as the Department's Family and Community Services Insights, Analysis & Research ('FACSIAR'), which conducts and supports analysis, research and evaluation across DCJ and also works with other government and non-government agencies and research organisations on specific projects, data linkage and research and evaluation activities.
17. I identified these two parts of the Department as the relevant areas that hold the information requested in your application. I am satisfied that SPC and FACSIAR have conducted reasonable searches to extract the data within the scope of your request. The results of these searches was that the SPC and FACSIAR located the information requested in your application.

### **The public interest test**

18. The 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.
19. The general public interest consideration in favour of access to government information set out in section 12 of the GIPA Act means that this balance is always weighted in favour of disclosure. Section 5 of the GIPA Act establishes a presumption in favour of disclosure of government information.
20. Before deciding whether to release or withhold information, the Department must apply the public interest test and decide whether or not an overriding public interest against disclosure exists for the information.
21. I have made my decision in accordance with section 13 of the GIPA Act by:
- a. identifying relevant public interest considerations in favour of disclosure,

- b. identifying relevant public interest considerations against disclosure,
  - c. attributing weight to each consideration for and against disclosure, and
  - d. determining whether the balance of the public interest lies in favour of or against disclosure of the government information.
22. I have applied the public interest test in accordance with the principles set out in section 15 of the GIPA Act which are:
- 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.

#### **Public interest considerations in favour of disclosure**

23. Section 12(1) of the GIPA Act sets out a general public interest in favour of disclosing government information, which must always be weighed in the application of the public interest test. The Department may take into account any other considerations in favour of disclosure which may be relevant (s12(2) GIPA Act).
24. In my view the following public interest considerations in favour of disclosure apply when considering the documents in issue:
- a. The statutory presumption in favour of the disclosure of government information;
  - b. The general right of the public to have access to government information held by agencies;
  - c. Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance;
  - d. 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;
  - e. Disclosure of the information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies; and
  - f. Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

### **Public interest considerations against disclosure**

25. The only public interest considerations against disclosure that can be considered are those in schedule 1 and section 14 of the GIPA Act.
26. On this occasion, I have not identified any public interest considerations against disclosure that are relevant to the information within the scope of your request. Therefore, in accordance with section 58(1)(a) of the GIPA Act, I have decided to provide you with a complete copy of the information that falls within the scope of your request.

### **Creation of a new record**

27. Section 75 of the GIPA Act provides that, although there is no obligation to provide access to government information by way of creating a new record or document, an agency is not prevented from doing so.
28. The Department holds the information requested in your application in the form of raw data that is reported on a quarterly basis. Therefore, the information was not held in the format requested in your application and was not “held” in a manner that could easily facilitate access.
29. Therefore, I have used my discretion on this occasion to create a new record pursuant to section 75 of the GIPA Act to respond to this specific aspect of your access application. This information has been provided to you at the end of this notice and is titled ‘**Attachment A**’.

### **Processing Charges**

30. I note that processing charges pursuant to section 61 of the GIPA Act in the sum of \$360.00 have been imposed on this application in accordance with the calculations set out in the Department’s letter to the applicant dated 2 May 2024, plus 1 additional hour from the original estimate of time, being a total of 12 hours of processing time for this application.
31. The Department received payment in full of the \$150.00 advance deposit from the applicant on 10 May 2024, which represents 50% of the total estimated calculated processing charges (11 hours), less the \$30.00 application fee which covers the 1<sup>st</sup> hour of processing.

### **Discount on Processing Charges**

32. The applicant has sought a discount under section 66 of the GIPA Act in which, if successful, the applicant is entitled to a 50% discount of the total processing charges on the basis that releasing the information sought would result in a special benefit to the public.
33. In this instance, the Department is satisfied that the information requested is of “special benefit to the public generally” and therefore has applied the discount under section 66 of the GIPA Act to the processing charges applied to this application. The Department has based this decision on the following:
  - a. The applicant is a [REDACTED] the Department understands that the purpose of this application is to request information for the purposes of the [REDACTED] and therefore the information released will be published and made available to the public.
  - b. The Department is satisfied that for the information requested “there is a benefit that is different from what is ordinary or usual to the general

public and thus not merely the interest of the applicant alone”  
(*Shoebridge v Forestry Corporation* [2016] NSWCATAD 93).

34. I have therefore calculated the processing charges for this application as follows:

Total processing charges for 12 hours @ \$30.00 per hour	= \$360.00
Special public benefit discount (50% of total processing charges)	= -\$180.00
Application fee (counted towards 1 <sup>st</sup> hour of processing)	= -\$30.00
Total processing charges owing	= <b>-\$150.00</b>
Advance deposit paid by applicant on 10 May 2024	= +\$150.00
<b>Total amount owing</b>	<b>= \$0.00</b>

### Disclosure Log

35. An agency must keep and publish a disclosure log of access applications made to the agency in response to which the agency has decided to provide access to some or all the requested information, if the agency considers that the information may be of interest to other members of the public.
36. You consented to the inclusion of details about your application in DCJ’s disclosure log. I consider that the information to which access has been granted may be of interest to other members of the public. For this reason, I have decided that details of your application will be included on DCJ’s disclosure log, which is available [online here](#).
37. Please note that your personal information will not be included on DCJ’s disclosure log.
38. The decision to include details about your application on DCJ’s disclosure log is not a reviewable decision as you indicated on your application that you did not object to the information being included.

### Review rights

39. 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.
40. 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).
41. You have 20 working days from the date of this Notice to apply for an internal review.
42. 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.

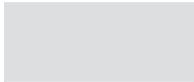
43. To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

44. You can also contact the IPC on freecall1800 IPC NSW (1800 472 679).

#### **Further information**

45. If you have any questions about this notice or would like any further information, please contact me on (02) 9716 2662.

Sincerely,



Lara Fitton  
**A/ OGIP Advisor**  
**Open Government, Information and Privacy Unit**  
**Department of Communities and Justice**

## Attachment A - Data

### Data in response to Questions 1 – 4

Period	Question 1	Question 2	Question 3	Question 4
1 Apr 2019 -30 June 2019	7	10	1	127
1 Jul 2019 - 30 Sep 2019	8	3	3	143
1 Oct 2019 - 31 Dec 2019	8	8	2	191
1 Jan 2020 - 31 Mar 2020	1	2	2	159
1 Apr 2020 -30 June 2020	2	2	3	200
1 Jul 2020 - 30 Sep 2020	4	3	4	116
1 Oct 2020 - 31 Dec 2020	5	10	9	90
1 Jan 2021 - 31 Mar 2021	4	7	3	80
1 Apr 2021 -30 June 2021	2	8	3	94
1 Jul 2021 - 30 Sep 2021	5	7	2	120
1 Oct 2021 - 31 Dec 2021	1	3	1	85
1 Jan 2022 - 31 Mar 2022	4	3	1	97
1 Apr 2022 -30 June 2022	7	5	5	123
1 Jul 2022 - 30 Sep 2022	3	7		101
1 Oct 2022 - 31 Dec 2022	3	11	1	103
1 Jan 2023 - 31 Mar 2023	5	5	1	95
1 Apr 2023 -30 June 2023	1	4		85
1 Jul 2023 - 30 Sep 2023	3	5	1	52
1 Oct 2023 - 31 Dec 2023	2	3	2	55
1 Jan 2024 - 31 Mar 2024	2	8	3	106
<b>TOTAL</b>	<b>77</b>	<b>114</b>	<b>47</b>	<b>2222</b>

### Data in response to Question 5

#### Main reasons for rejection of an offer of accommodation in public housing dwellings

<b>Awaiting documentation</b>	64.3%
<b>No response to offer</b>	10.8%
<b>Other</b>	6.5%
<b>Personal reasons</b>	4.6%
<b>Medical grounds</b>	4.4%
<b>No reason given</b>	3.7%

*Note: Main reasons for rejecting an offer of accommodation in public housing dwelling (excluding head leased dwellings) in the period from 1 April 2019 to 31 March 2024 shown as a proportion of all reasons for rejecting an offer of accommodation in public housing dwelling in the reporting period.*



## **Attachment A - Explanatory Notes**

### **Question 1:**

**Number of offers to public housing dwellings (excluding head leased dwellings) withdrawn with the reason "WITHDRAWN APPLICANT DECEASED"**

### **Question 2:**

**Number of offers to public housing dwellings (excluding head leased dwellings) withdrawn with the reason "WITHDRAWN APPLICANT IN GAOL"**

### **Question 3:**

**Number of offers to public housing dwellings (excluding head leased dwellings) rejected with the reason "REFUSED APPL CLAIMS PROPERTY S/STANDARD"**

### **Question 4:**

**Number of Housing Register applications closed where reason is "CLOSED REJECTED REASONABLE OFFER/S"**

*This data include all housing applications closed regardless if offers made to public housing, AHO or community housing dwelling.*