

8 July 2014

The Director, Justice Policy
Department of Justice
GPO Box 6
Sydney NSW 2001

Email: justice.policy@agd.nsw.gov.au

Review of the Government Information (Public Access) Act 2009

Thank you for the opportunity to make a submission to the above Review.

Conflict between PIPPA and GIPA

I am not sure if this comes within the terms of reference of your review.

In simple terms, it seems that the two acts, PIPPA and GIPA are in conflict. GIPA has as its mantra, give everything to everybody and PIPPA seems to try as hard as possible to frustrate Councils from giving out information.

I acknowledge that GIPA does have primacy over PIPPA but that does not ease the confusion when applying the acts and explaining to the public their rights. Further, the restrictions within PIPPA as to the release of information forces Council away from using Open Access Information Requests towards the formal GIPA process frustrating the intent of GIPA.

Council would like greater clarity when it can use open access information applications without breaching PIPPA, or the modification of PIPPA.

Narrow Definition of the Exemption "Law enforcement and security"

It would appear that the Administrative Decisions Tribunal is applying what is to Councils eye, a very narrow definition of the "Law and enforcement and security" clauses, such as they only apply to the activities of law enforcement agencies. Council has a large compliance role and relies to a large degree on the community raising issues of concern with us. The community expects that such information will remain confidential and is often faced with the fact that Council cannot guarantee such confidentiality do not proceed with a "complaint".

Council would like a specific inclusion that the presumption against disclosure contained within part 2 of Schedule 1 applies to local government compliance activities.

Copyright

Councils are at risk of breaching the Copyright Act when they receive requests for documents under GIPA. This primarily relates to plans and associated documents lodged with Development applications. Council would like greater clarity around its powers to release such information under GIPA and the indemnity that is available from council breaching copy Right.

Companion Animals Act 1998

In a similar manner to the above issue, Council is uncertain of its indemnity when it releases information contained within the Register as prescribed by the Companion Animals Act 1998. This needs to be clarified.

Open Access Applications

Most of the applications we process are for open access information, as opposed to informal applications. In those cases where we do get genuine informal applications, and a considerable amount of time would be involved in researching or copying records, we often refuse to deal with the matter informally and require the applicant to make a formal application. This is due to the fact that we are prohibited from charging for informal applications, are not compelled to provide access informally and do not wish to set a precedent of spending large amounts of time providing a free research service to the more inquisitive and persistent members of the public. If we were allowed to charge copying fees for informal applications this would make us able to provide access informally in accordance with the object of the act, without wasting resources.

Yours faithfully


Gary Murphy
General Manager