



Reference: TRIM ref for this letter

Enquiries: Manager Corporate Governance on 02 9976 1521

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

Via email: justice.policy@agd.nsw.gov.au

Dear Sir / Madam,

Re: Re: Submission on the review of the Government Information (Public Access) Act 2009 (GIPA Act)

Manly Council provides the following submission in relation to the review of the GIPA Act.

Open Access Information:

NSW Councils are required to provide Open Access Information (Schedule 1 of the Regulation) free of charge to members of the public, this includes all information regarding Development Applications whenever they have been created.

Some councils' have records dating back 100 years and the Act places no restrictions on the number of requests a person may make or a limit on the volume of files any one person can request. This requirement causes a large financial burden to councils particularly in relation to Development Applications.

The unreasonable diversion of resources clause in the Act, Section 53(5), only relates to Access Applications and there is no provision in the Act to deal with unreasonable and repeated requests for Open Access Information. The financial burden for some councils in dealing with these requests is enormous as they may have Development Application Files stored in off-site storage facilities and Council must pay retrieval costs to request files, as well as organise for the files to be send back to the off-site storage once the files have been viewed.

It should be noted that most of these files are in hard copy and the cost involved in scanning all these files is unfeasible and it is very rare to receive multiple requests for the same Development Application at the same time making economies of scale difficult.

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Additionally, as there is no limit on the number of requests a member of the public can make, one council has an example of a member of the public requesting the same Development Application files 17 times within a 12 month period.

Council requests that the review consider:-

- (a) Including a provision in the Act for unreasonable diversion of resources in relation to requests under the Act for Open Access Information;
- (b) Limits the number of requests a person can make in a year for the same Open Access Information;
- (c) The ability to charge if a person requests the same information on multiple occasions; and
- (d) Reviewing the words in Schedule 1 Part 3 of the Regulation that relate to Development Applications so there is a limit on the accessibility of Development Applications available free of charge eg. the current version of a Development Application for a property could be free of charge and previous versions available at a cost.

Fees under the Act:

The \$30 Application and Processing fees was introduced in 1989 under the previous Freedom of Information Act. There has been no increase in this statutory fee since 1989. Given, the increased financial burden of storage and retrieval costs outlined above, as well as administrative costs involved, it is requested that these fees be increased and provision be included in the Act for agencies to make annual increases of these fees in line with CPI.

Interaction of GIPA and PIPPA Acts

The review should consider the interaction of the above two acts and attempt to resolve more clearly the conflict they provide for agencies in dealing with requests for information. PIPPA promotes the protection of personal information and only using information for the purpose it was collected for, whereas GIPA promotes the accessibility of all government information to the public.

Copyright

Section 6(1) of the Act requires councils to make its Open Access Information publicly available and Section 6(2) states that it should be available on a website maintained by the agency, however some of the documents this applies to are copyright documents such as plans, drawings, statements etc. and there is no protection for councils in providing copies of these documents as required under GIPA.

Section 6(6) of the Act states "Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright".

Many councils interpret Section 6(6) to mean that they do not need to provide any documents which are copyright. Given a significant amount of copyright documents are

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submitted in respect to Development Applications this goes against the objects of the Act in providing greater openness and transparency of government information.

Alternatively, the Federal Copyright Act provides for "fair dealing" with respect to making copies of copyright documents in order to meet obligations under legislation. This protection could be extended to councils without any cost by way of a guideline from the IPC stating that councils meet these "fair dealing" provisions.

Council suggests three possible solutions to solving the copyright issue:-

- (a) Amend Section 6(6) of the Act to state "The provision of open access information as required under this Section does not constitute an infringement of copyright".
- (b) That the Department of Justice make representations to the Australian Government to request that the Copyright Act be amended to include recommendation 15.3 of the Australian Law Review Commission report on 'Copyright and the Digital Economy' (Final November 2013) in order to resolve the copyright issues currently being experienced by local government.
- (c) The IPC issuing a guideline stating that councils are not in breach of copyright for reproducing Open Access Information in order to comply with the GIPA Act.

If you require any further information, please contact Council's Manager Corporate Governance on 02 9976 1521.

Yours faithfully

Henry T Wong
General Manager

Date: 28th August 2014

