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The Director, Justice Policy
justice.policy@agd.nsw.gov.au
Department of Justice
GPO Box 6
Sydney NSW 2001

Dear Director

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

Pittwater 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 including all information regarding Development Applications. This requirement places a heavy financial burden on councils particularly in relation to records that are not held electronically. Currently the Act allows for an unlimited number of requests and volume of files that any one person can request. The unreasonable diversion of resources clause in the Act [s53(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 councils in dealing with these requests is significant as older files are generally stored in off-site storage facilities and Council must pay retrieval and re-sending costs. It should be noted the cost involved in scanning all these files is unfeasible.

Pittwater Council requests the Review consider:

- Including a provision in the Act for unreasonable diversion of resources in relation to requests under the Act for Open Access Information;
- Limits on the number of requests a person can make in a year for the same Open Access Information;
- The ability to charge if a person requests the same information on multiple occasions; and
- Reviewing the words in Schedule 1 Part 3 of the Regulation that relate to Development Applications so as to limit the accessibility of Development Applications available free of charge. For example, 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 \$30 per hour processing fees were 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 Pittwater Council recommends these fees be increased and provision be included in the Act for agencies to make annual increases to these fees in line with CPI.

An increasing number of businesses and commercial entities, such as real estate agents, are frequently applying for Open Access Information. As they are accessing information under the Act for their commercial benefit Pittwater Council suggests these entities be required to pay commercial access fees to ensure their commercial gain is not financially supported by the wider community.

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. Clarity about how these two Acts interact would be beneficial to both agencies and applicants.

Copyright

Section 6(1) of the Act requires councils to make Open Access Information publicly available and Section 6(2) states that it should be available on a website maintained by the agency. Some information this applies to is works covered by Copyright such as architectural plans, drawings and consultant reports and there is no protection from copyright infringement 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 they do not need to provide any documents which are copyright protected. Given a significant amount of copyright documents are submitted in respect to Development Applications this conflicts with the objects of the Act in providing greater openness and transparency of government information.

The Australian Law Review Commission produced a report in November 2013 that was tabled in Federal Parliament on Copyright and the Digital Economy. The report recommends (pg330) that local government be given an exemption to Copyright where a statute requires public access. Pittwater Council requests the Department of Justice make representations to the Australian Government to request the Copyright Act be amended to include recommendation 15.3 (shown below) of the Australian Law Review Commission report on Copyright and the Digital Economy dated November 2013, in order to resolve the copyright issues currently being experienced by local government.

"15.3 The ALRC recommends that the current exceptions for parliamentary libraries and judicial proceedings should be retained, and that further exceptions should be enacted. These exceptions should apply to use for public inquiries and tribunal proceedings, uses where a statute requires public access, and use of material sent to governments in the course of public business. Governments should also be able to rely on all of the other exceptions in the Copyright Act. These exceptions should be available to Commonwealth, state and local governments".

Restraint Orders

Section 110 of the Act allows for restraint orders to be sought from the NSW Civil and Administrative Tribunal where an applicant has made at least 3 unmeritous applications to an agency over two years. This process is time consuming and expensive for agencies. Pittwater Council recommends a similar restraint order power be granted to the Information Privacy Commission.

Access to Information by Law keeping agencies

A section in the old FOI Legislation specifically provided councils with an exemption so that they could release information to law agencies such as the police for the purpose of law and order.

There is no such exemption in the GIPA legislation and as a consequence councils cannot release information to the Police without going through the normal process of application, payment and public interest considerations and third party consultation. The GIPA Act needs to be amended to allow for the easy and quick access to council information by these agencies.

Thank you for considering Pittwater Council's submission and I look forward to your findings.

Yours sincerely



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GENERAL MANAGER

