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

Review of the Government Information (Public Access) Act 2009

Dear Director,

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

Fees

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, we suggest that these fees be increased and provision be included in the Act for agencies to make annual increases of these fees in line with the CPI.

Archive Retrieval

The requirement to provide archived development application information free of charge causes a large financial burden to councils. Some councils have records dating back 100 years and the Act places no restriction on the number of requests a person may make or limit on the volume of files any one person can request. 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 enormous, most development application files councils have, are stored in off-site facilities and councils must pay retrieval costs to request files as well as organise for the files to be sent back once they have been viewed. The digitisation of these files is also unfeasible.

Copyright

Shellharbour City Council requests that the Department of Justice make representations to the Australian Government to request that 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 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 exceptions should be available to Commonwealth, state and local governments.*

Consultation on Public Interest Considerations

Section 54 (2) states that *'Information relating to a person is of a kind that requires consultation under this section if the information: (a) includes personal information about the person'*

The requirement to consult with third parties when their personal information is contained in a record often causes stress to those third parties, especially if the application is in relation to neighbourhood disputes and complaints. Agencies should be given the option of deciding to delete the personal information from a copy of the record instead of consulting when releasing this personal information is likely to cause stress, harassment or intimidation to those third parties (unless the personal information was specifically requested).

Harassment & Intimidation

Table to Section 14 (3) states *'there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to... (f) expose a person to a risk of harm or of serious harassment or serious intimidation'*

The feedback from NCAT, the IPC and the Crown Solicitors office suggests that the word 'serious' is to the extreme end of the scale and the consideration is often found not to be serious enough to sway the balance against disclosure. It is suggested that this word be replaced by 'reasonable' as this is more realistic. Staff of agency's are not qualified or experienced enough to determine if a person is at risk of 'serious' harm, harassment or intimidation, this should be left to the professionals.

Thank you for this opportunity to provide a submission on the review of the GIPA Act. If you have any questions please contact the Public Information Officer, Sonya Stewart on (02) 4221 6330.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S C Stewart', with a long horizontal flourish extending to the right.

Sonya Stewart
Public Information Officer