THE HILLS SHIRE COUNCIL
3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064, Baulkham Hills BC NSW 2153

Telephone +61 2 9843 0555
Facsimilie +61 2 9843 0409
Email council@thehills.nsw.gov.au
www.thehills.nsw.gov.au

DX 9966 Norwest
ABN No. 25 034 494 656

27 August 2014

Director
Justice Policy
Department of Justice,
GPO Box 6,
SYDNEY NSW 2001

Dear Director,

Submission on Review of the Government Information (Public Access) Act 2009

I have been involved with managing all Government Information (Public Access) Act (GIPA) applications at The Hills Shire Council since the inception of the Act and prior to that, had responsibility for Freedom of Information and Section 12 of the Local Government Act requests for many years.

The rationale behind the objects of the GIPA Act whereby Agencies (hereafter I will use the term Council or Councils) would place Open Access information on their websites and allow members of the public to "serve themselves" was commendable but flawed.

I refer specifically to information regarding Development Applications. Since the introduction of GIPA, The Hills Shire Council has received an ever increasing number of Informal Applications from Consultants seeking information in respect of approvals going back any number of years. Council often has to pay a fee to retrieve files from off-site record repositories. The information is provided and the Consultants often comment to me how wonderful it is that Council provides a service free of charge to them and they then charge their clients a handsome fee.

Since the introduction of rate pegging legislation in 1976 Councils have been told by successive governments that they must "tighten their belts" and they should introduce "fees for service" wherever possible to reduce reliance on rate income and government grants. Councils do provide a service to these Consultants, often at quite a cost that is subsidised by ratepayers and since so many Government Departments can charge a fee for a large range of services, it is rather astounding that Council's cannot levy a fee for a service because this service is "the provision of information".

Council has no concerns about providing information to individuals but providing information to Consultants free of charge that "on sell" the information is simply frustrating and unfair.

The other source of frustration, and probably Council can wear some of the blame for this, is that Consultants and others are simply too lazy to go to Council's website to "serve themselves" or say that they do not possess good computer skills, so they make an Informal Application and due to the small photocopying charges involved, it is hardly economical to then

raise a sundry debtor account and then have to chase up unpaid accounts. So Council does not levy any charge. This is a cost to Council.

It is acknowledged that Section 53(5) of the Act is intended to provide some relief to Councils who receive applications where any search for information would require an unreasonable and substantial diversion of its resources. My understanding though is that this applies to Access Applications and that there is no provision in the Act to deal with unreasonable and repeated requests for Open Access Information. As well as this, there does not appear to be any restrictions on the number of requests a member of the public can make to a Council on the same subject in a short period of time.

The Hills Shire 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 on the number of requests a person can make in a twelve month period for the same Open Access Information.
c) A mechanism allowing Councils to charge a fee for service if a person requests the same information on multiple occasions
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 made available at a cost.

Fees under the Act

It is also acknowledged that members of the public should not be disadvantaged in their quest for information due to their inability to pay exorbitant fees. The current fee of $30 though, was fixed in 1989 when that same philosophy applied and even if the fee was doubled, it would still be much less in percentage terms than if an inflation factor since that time was applied.

Council feels that it would not be unreasonable to double the current fee given the storage and retrieval costs it has to bear and that consideration be given to allowing an annual increase in line with the CPI.

Interaction of GIPA and Privacy and Personal Information Protection Act 1998 (PIPPA)

The review should consider the interaction of the above two acts and attempt to resolve more clearly the conflict they provide for Councils 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

Consultants frequently ask for copies of Flora and Fauna Reports prepared by other Consultants or copies of reports prepared for licensed premises prepared by other Consultants that they invariably "cannibalise" for their own client's particular project. If these reports form part of a Development Application Councils are seemingly obliged to make them available to any person that has submitted a GIPA application.

But Section 6(6) of GIPA 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". Staff often interpret this to mean that they do not need to provide

any documents which may be subject to copyright. Not only does this aggravate the applicant who invariably knows a report exists and often accuse Council of a "cover up", it also appears contrary to the objects of the Act in in providing greater openness and transparency of Council information.

I have become aware of a report produced by the Australian Law Review Commission in November, 2013 that recommends that local government be given an exemption to Copyright where a statute requires public access.

The Hills Shire Council requests that as part of the current review of GIPA, 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 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".

Thank you for providing Council with an opportunity to make a submission as part of your review.

Yours faithfully

Peter Doyle
MANAGER – EXECUTIVE SERVICES AND PUBLIC OFFICER

CC: