

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

RE: SUBMISSION ON THE REVIEW OF THE GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA ACT)

Dear Director,

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

Open Access Information

NSW Councils are required to provide its Open Access Information (Schedule 1 of the Regulation) free of charge to members of the public and this includes all information regarding Development Applications whenever they have been created. This requirement causes a large financial burden to councils particularly in relation to Development Applications. We 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.

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 enormous as most of the Development Application Files councils have, are stored in off-site storage facilities and Council must pay retrieval costs to request files as well as organise for the files to be sent 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.

Wingecarribee 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 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 ever increasing financial burden of storage and retrieval costs outlined above it is recommend 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.

Interaction of GIPA, PIPPA Acts & Office of Local Government Model Code of Conduct and the Procedures for the Administration of the Code of Conduct

The review should consider the interaction of the above two acts and the Premier & Cabinet's Model Code of Conduct 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. Whereas, the Model Procedures for the Administration of the Code of Conduct (Part 13 Confidentiality (13.1)) conflicts the release of information agencies can again provide.

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 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.

Wingecarribee Shire Council suggests two 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) 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.

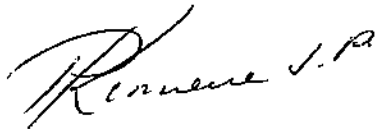
Harassment & Intimidation

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.

Wingecarribee Shire Council appreciates the opportunity to provide this submission on the review of the GIPA Act. Should you have any questions in relation to this submission please do not hesitate in contacting the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peta Kinnane', with a stylized flourish at the end.

Peta Kinnane
Governance Coordinator