

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

By email: [justice.policy@agd.nsw.gov.au](mailto:justice.policy@agd.nsw.gov.au)

I refer to your request for comments on the statutory review of the Government Information Public Access Act 2009.

### **Operation of the GIPA Act**

The GIPA Act operates to “maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective”.

The object of the GIPA Act is to open government information to the public by:

- (a) authorising and encouraging the proactive public release of government information by agencies, and
- (b) giving members of the public an enforceable right to access government information, and
- (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

Fire & Rescue NSW supports these objectives. Since the introduction of the GIPA Act, Fire & Rescue NSW has released information in the following ways:

- Proactive release of current emergency incident information on social media (such as Twitter) and proactive media releases on current or emerging incidents
- Proactive release of information about recruitment and community safety information
- Informal release of a subset of incident information in response to requests from insurers or affected parties (such as homeowners)
- Formal release of incident reports in response to GIPA applications
- Formal release of other sorts of information in response to GIPA applications.

In addition Fire & Rescue NSW has administrative systems in place to release the following information to its staff:

- Individual's personnel file
- Individual's medical records and information
- Relevant information in relation to a disciplinary investigation or charge.

### **Observations about recent requests**

In 2013/14, Fire & Rescue NSW received 100 formal GIPA requests. The vast majority of these were requests for incident reports. All of these requests were responded to within the statutory timeframes and the reports were released in full, except where personal information was redacted pursuant to the GIPA Act. Each of these requests took between 30 minutes and 1 hour to process.

There have been a number of applications from media and the Fire Brigade Employees' Union. Over the past year, applications by these two groups have tended to focus on information around the issue of TOLing (taking fire truck temporarily offline where it is safe to do so, in cases of unplanned absences). These requests are often complex and involve numerous re-scoping conversations with the applicant and many hours of work, both searching and reviewing the documents to identify information to which there may be considerations against disclosure.

Fire & Rescue NSW views these types of requests as supporting the objectives of the GIPA Act – that is, ensuring open and accountable government.

However, Fire & Rescue NSW has concerns regarding another class of requests, which are small in number but require extensive processing time. In the past year, Fire & Rescue NSW processed twelve formal requests from eight current or former staff members. There were four requests from one person over the course of the year, while three of the applicants have lodged multiple requests in previous years.

Almost all of these requests centred around disciplinary matters in which the applicants were involved and had already received relevant information via an administrative process. These requests are generally broad and wide-ranging, verging on “fishing” expeditions, and are often overlapping with previous applications by the same applicant. One example is: “All emails & correspondence sent or received by [senior officer 1] that make mention of me... between 12/1/13 and 20/1/14.”

Together, these requests took more than 170 hours to process and four were over 25 hours each (conservatively estimated). Fire & Rescue NSW staff involved in GIPA processing do their best to work with the applicant to re-scope the request into something manageable or reasonable which is amenable to the applicant. Fire & Rescue NSW views these requests as generally not supporting the objectives of the GIPA Act.

The decision-making process under the GIPA Act asks for the public interest for and against disclosure to be weighed in such cases. This information is often of interest to one individual alone, and it is difficult to make a case for release in the “public” interest. In fact, the information tends to undermine the investigative process by requesting information that is confidential or sensitive, such as allowing identification of the source of a complaint or key evidence in an investigation.

### **Suggested change to the GIPA Act**

Fire & Rescue NSW suggests that the public interest considerations against disclosure listed in the Table of Section 14 of the GIPA Act be amended to ensure that it is conclusively presumed that there is an overriding public interest against disclosure of information that would reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant in disciplinary matters. This is already the case in relation to law enforcement and security, and should extend for the same reasons to internal agency proceedings and investigations.

This would reduce the chances of future rulings such as *New South Wales Office of Liquor, Gaming and Racing v Fahey (GD)* [2012] where the court ruled against the agency, and the Information Commissioner, that the informants name be released as there was a public interest in identifying the informant.

### **Observations about the Cabinet in confidence test**

A recent decision of the Civil & Administrative Tribunal (*Fire Brigade Employees’ Union v Fire & Rescue NSW* [2014] NSWCATAD 113) covered documents over which the cabinet information presumption was made. The Member decided in favour of Fire & Rescue NSW and accepted the argument that Ministers have the discretion to nominate if they approve a matter or if it is forwarded to Cabinet for approval. Therefore, agencies are often compelled to label documents Cabinet-in-Confidence as they are unable to determine if or when a source document may become part of a cabinet submission.

It would greatly assist if the GIPA Act could offer more clarity about the kinds of documents that are deemed to be Cabinet-in-Confidence.

If you would like to discuss these matters further, please contact me on the below details.

**Kelly McFadyen JP**  
**Assistant Director Governance and Legal**  
Governance and Legal Office



E [kelly.mcfadyen@fire.nsw.gov.au](mailto:kelly.mcfadyen@fire.nsw.gov.au) | T (02) 9265 3957 | M 0408 295 928 | [www.fire.nsw.gov.au](http://www.fire.nsw.gov.au)  
Level 10, 227 Elizabeth Street, Sydney NSW 2000

