



**Review report under the
*Government Information (Public Access) Act 2009***

Applicant:

Agency: NSW Police Force

OIC reference: 11-255

Date review request received: 10 August 2011

Date of final report: 31 October 2011

Summary of this report

In April 2011, the applicant submitted an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)* to the NSW Police Force (**Police**) for:

the written authorisation required under s41 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* executed by the Senior Police Officer who gave authorisations to erect roadblocks at and near Nimbin NSW on Friday 25th Saturday 26th February 2011.

On 2 May 2011, the Police sent the applicant a notice of determination telling him that they could not find any records of the information he asked for.

The applicant asked for an internal review of the Police decision. In an internal review decision dated 10 June 2011, the Police told the applicant that the information he asked for did not exist.

On 10 August 2011, we received a request from the applicant asking us to review the Police's internal review decision. We have reviewed the Police decision and are satisfied that the Police do not have a copy of the record requested by the applicant.

Our review

The Police decision was made under section 58(1)(b) of the GIPA Act and is a reviewable decision under section 80(e) of that Act.

In its internal review decision, the Police told the applicant that in the course of searching for the information he requested:

inquiries were made to the Lismore Police Station and Inspector N Bruce advised that there was no road closure on the 25 and 26 of February 2011 at Nimbin. Inspector Bruce advises that there was a two day operation completed that involved several police strategies, one of which was a stationary Random Breath Testing (RBT). Neither this process or any other involved a road block as described in [The applicant's] application.

We asked the Police to give us information about the authority relied upon by the Police to carry out the random breath testing referred to in its decision. The Police referred us to section 13 of the *Road Transport (Safety and Traffic Management) Act 1999*, and noted that section 18 of that Act applies to drug testing. The Police did not tell us whether or not drug testing occurred at the relevant time.

We are satisfied, based on the information provided by the Police, that they do not have an authorisation of the kind requested by the applicant.

We find that the Police decision was made in accordance with the GIPA Act.

For completeness, we note that under section 76 of the GIPA Act the Police are entitled to give applicants access to information in addition to the information applied for, unless there is an overriding public interest against disclosure. Although the specific authorisation requested by the applicant does not exist, the Police could have provided the applicant with the relevant authority for the two day operation.

Further information

The applicant has told us that he believes the Police acted improperly in carrying out the operation which led to the applicant's access application.

We have advised the applicant that the scope of our review was limited to the Police decision in response to his access application and, subsequently, the Police response to his request for an internal review. We have not considered the applicant's complaint about the conduct of the Police.

Information about how to complain about a Police Officer is available on the Police's website at http://www.police.nsw.gov.au/services/additional_services/complain_about_a_police_officer. Complaints about Police conduct can also be made to the NSW Ombudsman (<http://www.ombo.nsw.gov.au/>) and/or the Police Integrity Commission (<http://www.pic.nsw.gov.au/>).

Closing our file

This review is now closed.

Review rights

Our review reports are not binding and are not reviewable under the GIPA Act. However a person who is dissatisfied with a reviewable decision of an agency may apply to the Administrative Decisions Tribunal (**ADT**) for a review of that decision.

If the applicant is dissatisfied with:

- a. our review, or
- b. the Police's response to our review,

The applicant may ask the ADT to review the original decision of the Police.

An application for ADT review can be made up to four weeks from the date of this report (that is by **28 November 2011**). After this date, the ADT can only review the decision if it agrees to extend this deadline. The ADT's contact details are:

Administrative Decisions Tribunal

Level 10, 86 Goulburn Street,

Sydney, NSW, 2000

Telephone	(02) 9377 5711
Facsimile	(02) 9377 5723
TTY	(02) 9377 5859
Internet	http://www.lawlink.nsw.gov.au/adt
e-mail	ag_adt@agd.nsw.gov.au

Questions?

If you have any questions in relation regarding the review please contact our office on 1800 472 679.