



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

Applicant: The Applicant
Agency: Southern Cross University
Report date: 14 August 2015
IPC reference: IPC15/R000145
Keywords: Government information – advance deposit – estimate of processing charges – reduction in processing charge – refusal to deal further with an access application

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Summary

1. The Applicant applied for information from the Southern Cross University (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency made reviewable decisions regarding the imposition of an advance deposit, refusal to reduce the processing charge and refusal to deal further with an access application because the applicant had failed to pay the advance deposit within the time required for payment.
3. We make no recommendations in relation to the Agency's decisions.

Background

4. On 23 October 2013, the Applicant applied under the GIPA Act to the Agency for access to information listed in an annexure titled "Particulars of the GIPA Application".
5. On 15 November 2013, the Agency notified the Applicant that they were required to pay an advance deposit of \$2,460 by 13 December 2013, which was calculated from the Agency's estimate of processing charges of \$4,920.
6. On 9 December 2013, the Applicant requested the Agency consider a reduction in processing charges on the grounds of financial hardship and special public benefit.
7. On 12 December 2013, the Agency decided to reduce the estimated processing charges by fifty per cent to \$2,160 on the grounds of financial hardship with no additional reduction on the grounds of special public benefit. The Applicant was notified that they were required to pay a revised advance deposit of \$1,080 by 13 December 2013.
8. On 20 December 2013, the Applicant requested the Information Commissioner conduct an external review of the Agency's decisions to impose a processing charge and to refuse to reduce the processing charge due to a special public benefit.
9. On 9 September 2014, the Applicant advised the Agency that they had obtained access to some of the requested information by way of an application through the *Privacy and Personal Information Act 1998* and requested a reduction in the processing charge payable by the Applicant.
10. On 8 October 2014, the Information Commissioner's external review was completed with no recommendations made on the Agency's decisions.
11. On 19 November 2014, the Agency considered the Applicant's request of 9 September 2014 and affirmed its decision of 12 December 2013 to request from the Applicant an advanced deposit of \$1,080.
12. On 9 December 2014, the Agency decided to refuse to deal further with the application as the Applicant had failed to pay the advanced deposit by 13 December 2013.
13. On 8 January 2015, the Applicant applied for an internal review of this decision and provided the Agency with information relating to the calculation of the processing charge.
14. On 20 January 2015; the Agency conducted an internal review of its decision to refuse to deal further with the application. The Agency cited section 82(4) of the GIPA Act as preventing it from reviewing its decision made on processing

charges because the decision had been the subject of review by the Information Commissioner.

15. On 16 March 2015, the Applicant applied for an external review of the Agency's refusal to reconsider its decision made on 19 November 2014 regarding processing charges in its internal review.
16. The Applicant specifically sought the Information Commissioner's review of matters relating to processing charges and advance deposits.

Decisions under review

17. We understand that the external review is for a review of the following reviewable decisions:
 - a. to require the Applicant to pay an advance deposit in the amount of \$2,460 (made on 15 November 2013) which was varied to \$1,080 (notified on 12 December 2013) – **decision 1** (section 80(j) of the GIPA Act);
 - b. to refuse a reduction in the processing charge based on the grounds of special public benefit (made on 12 December 2013) – **decision 2** (section 80(k) of the GIPA Act);
 - c. to refuse to deal further with the application as the Applicant had failed to pay the advanced deposit by 13 December 2013 (made on 9 December 2014) – **decision 3** (section 80(c) of the GIPA Act); and
 - d. to refuse to deal further with the application as the Applicant had failed to pay the advanced deposit by 13 December 2013 (made on 20 January 2015 by way of an internal review) – **decision 4** (section 80(c) of the GIPA Act).

Matters informing this review

18. An external review conducted by the Information Commissioner dated 8 October 2014 reviewed the decisions 1 and 2, and provided no recommendations to the Agency (previous external review). We will be informed by the findings of that external review.
19. We will also be informed by the case of *National Tertiary Education Union v Southern Cross University [2015] NSWCATAD 151* (the NTEU case), which dealt with processing charges, advance deposits and entitlement to discounts.

Decision 1: Imposition of an advance deposit and estimated processing charges

20. In seeking this external review, the Applicant raised concerns relating to how the Agency determined the estimated processing charge for the access application. This arose from new information obtained by the Applicant which showed a file note of the Agency's calculation process.

Estimated processing time and estimated processing charges

21. Agencies must provide the applicant with a notice which contains certain information including the estimated processing charge when requiring the payment of an advance deposit. The estimated processing charge is informed by the estimated processing time for anticipated work required to deal with the application.
22. Our previous external review considered whether the Agency justified its estimation of the processing time, which leads to the calculation of the estimated processing charge, in the Agency's notice of 15 November 2013.
23. We agree with the findings in the previous external review at paragraphs 8 to 19 that the estimation of processing time is justified.
24. We note that the Agency cannot make a decision to impose a processing charge on the Applicant until work on an application has finished and the number of hours spent on the application is known. At that time, the Applicant will receive a notice of processing charges stating whether any processing charges will be payable and how these charges have been calculated.
25. On that basis, the Agency has made no reviewable decision regarding the imposition of a processing charge for our external review.
26. We note that the Agency has at all times been using the term "estimated processing charge" when corresponding with the Applicant, which is a reflection of this.

Notice of advance deposit

27. The Agency made the decision on 15 November 2013 to require the Applicant to pay an advanced deposit for the amount of \$2,460. It varied this amount on 12 December 2013 to the amount of \$1,080 on the grounds of financial hardship.
28. The NTEU case states that an agency is able to change the amount payable by an applicant by variation of the notice without the need to make a new decision.
29. Our previous external review considered whether the Agency met the notice requirements in the Agency's notice of 15 November 2013 and correspondence of 12 December 2013.
30. We agree with the findings in the previous external review at paragraphs 20 to 22 that the estimation of processing time is justified.
31. On that basis, we are satisfied that decision 1 and its variation is justified.

Decision 2: Refusal to reduce processing charge

32. Our previous external review considered whether the Agency justified its decision of 15 November 2013 to refuse a reduction in the processing charge based on the grounds of special public benefit.
33. We agree with the findings in the previous external review at paragraphs 23 to 27 that the decision is justified.
34. On that basis, we are satisfied that decision 2 is justified.

Decisions 3 and 4: Refusal to deal further with an access application

35. Section 70(1) of the GIPA Act states:

An agency may refuse to deal with an access application if the applicant has failed to pay an advance deposit within the time required for payment.

Original decision of 9 December 2014

36. On 15 November 2013, the Agency gave notice to the Applicant that stated payment of the advance deposit was due by 13 December 2013.
37. On 9 December 2014, the Agency gave notice to the Applicant that it had decided to refuse to deal further with the access application pursuant to section 70 of the GIPA Act as payment was not received by the Agency.
38. On that basis, we are satisfied that decision 3 is justified.

Internal review decision of 20 January 2015

39. The Applicant sought an internal review of the Agency's decision of 9 December 2014.
40. Section 70(3) of the GIPA Act states:
- The review under Part 5 of a decision to refuse to deal further with an application for failure to pay an advance deposit is to be a review of both the decision to refuse to deal further with the application and the decision to impose the advance deposit (unless the decision to impose the advance deposit has already been reviewed under that Part)*
41. The Agency conducted an internal review of the decision to refuse to deal further (decision 3) but not the decision to impose the advance deposit (decision 1).
42. It provided that section 82(4) of the GIPA Act restricted its ability to conduct an internal review of decision 1. The Agency has correctly applied this provision.
43. We note that even if the Agency did not rely on this provision, section 70(3) of the GIPA Act would have prevented the Agency from conducting the internal review because decision 1 was already reviewed by the previous external review.
44. For the reasons in paragraphs 36 to 38 of this report, we are satisfied that decision 4 is justified.

Recommendations

45. We make no recommendations in relation to the Agency's decisions.

Review rights

46. Our reviews 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 NCAT for a review of that decision.
47. The Applicant has the right to ask the NCAT to review the Agency's decision.

48. An application for a review by the NCAT can be made up to 20 working days from the date of this report. After this date, the NCAT can only review the decision if it agrees to extend this deadline. The NCAT's contact details are:

NSW Civil and Administrative Tribunal
Administrative and Equal Opportunity Division
Level 10, John Maddison Tower
86-90 Goulburn Street,
Sydney NSW 2000

Phone: 1300 006 228

Website: <http://www.ncat.nsw.gov.au>

Completion of this review

49. This review is now complete.
50. If you have any questions about this report please contact the Information and Privacy Commission on 1800 472 679.

Elizabeth Tydd
Information Commissioner