



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

Applicant: The Applicant
Agency: Department of Education
Report date: 2 December 2016
IPC reference: IPC16/R000607
Keywords: Government information – information not held

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Summary

1. The Applicant applied for information from the Department of Education (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. In the decision the agency provided access to some information with redactions and decided that other information was not held by the Agency.
3. The Information Commissioner makes no recommendations in relation to the Agency's decision.

Background

4. The Applicant applied under the GIPA Act to the Agency for access to the following information:
 - a. *A copy of my employment records as a teacher DET No. [redacted]. This includes information held by the Department's:*
 - I. *Human Resources Directorate*
 - II. *Employee Performance and Conduct Directorate*
 - III. *Health and Safety Directorate*
 - b. *Records that show if my name appears on any confidential list of 'do not employ', including the Principal's confidential do not employ list.*
5. In its decision issued on 12 September 2016, the Agency decided to provide access to some information, refuse access to other information and that other information was not held.
6. In seeking a review of the decision by the Information Commissioner, the Applicant confirmed in a letter dated 20 October 2016 that formed part of the application for external review:

I would like to review the formal decision that 'no records exist for the principal's confidential do not employ list.'
7. This review will be limited to consideration of the Agency's decision in relation to point b above of the application for information.

Decisions under review

8. The decision under review is the Agency's decisions that no records are held under section 58(1)(b) of the GIPA Act. This is a reviewable decision under section 80(e) of the GIPA Act.

Decision that information is not held

9. The Agency decided that:

...you have never been placed on the Departments state-wide confidential list of people not to be employed in NSW public schools. Therefore, no records are held for this item of your request.
10. Section 53 of the GIPA Act requires agencies to conduct reasonable searches for government information requested in an access application. When a decision is made that information is not held by an agency the issue to be

addressed is whether or not the searches undertaken to identify relevant information were adequate.

11. In *Smith v Commissioner of Police [2012] NSWADT 85*, Judicial Member Isenberg said at paragraph 27:

In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:

 - (a) *are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so*
 - (b) *have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case.*
12. When considering whether there are reasonable grounds to believe that information exists and whether searches to locate information were reasonable, the facts, circumstances and context of the application are relevant. Key factors in making an assessment about reasonable searches include "the clarity of the request, the way the agency's recordkeeping system is organised and the ability to retrieve any documents that are the subject of the request, by reference to the identifiers supplied by the applicant or those that can be inferred reasonably by the agency from any other information supplied by the applicant" (*Miriani v Commissioner of Police, NSW Police Force [2005] NSWADT 187* at [30]).
13. According to *Smith*, first we need to be satisfied that there are reasonable grounds to believe that the requested documents, that is the do not employ list (the list) which includes the Applicant's name, exists.
14. In the Applicant's submission she includes a reference to the EPAC system which contains the list and can be accessed by principals and staff that have HR responsibilities.
15. In the notice of decision, the Agency describes the searches undertaken to locate the requested information. This includes detailing the searches undertaken of relevant repositories and areas to locate the specific information requested by the Applicant. Searches undertaken include by the Probity area (a unit within the Human Resources department) which was encompassed by the searches undertaken by Human Resources.
16. We have contacted the Agency who has confirmed that the Probity area centrally manages the list and that the list is not managed by individual principals. The Agency also confirmed that a search was undertaken by EPAC who advised that they do not have a list with the Applicant's name on it.
17. After conducting the searches the Agency was unable to locate the requested document, which is a do not employ list which includes the Applicant's name. The Agency searched electronic databases, physical files and individual email accounts across the Human Resources Directorate, EPAC and the Health and Safety Directorate. We are satisfied that the Agency has conducted searches of the relevant business areas and repositories and that the searches were sufficiently thorough.
18. Therefore we are satisfied that there are no reasonable grounds to believe that a do not employ list in which the Applicants name appears, exists.
19. We are satisfied, based on the information before us, that the search efforts of the Agency are consistent with *Smith* and satisfy the requirements of section 53 of the GIPA Act.

Recommendations

20. The Information Commissioner makes no recommendations in relation to the Agency's decision that information as requested in point b. of the application for information is not held.

Review rights

21. 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 NSW Civil and Administrative Tribunal (NCAT) for a review of that decision.
22. The Applicant has the right to ask the NCAT to review the Agency's decision.
23. 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

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

Elizabeth Tydd
Information Commissioner