

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

Applicant: Ms Susan Russell
Agency: NSW Police Force
Report date: 09 December 2015
IPC reference: IPC15/R000505
Keywords: Government information – personal information

Contents

Summary	2
Decisions under review	2
The public interest test.....	2
Public interest considerations in favour of disclosure.....	3
Public interest considerations against disclosure	3
Consideration 3(a) – reveal an individual’s personal information.....	3
Balance of public interest	4
Recommendations.....	5
Review rights	5
Completion of this review	5

Summary

1. Ms Susan Russell (the Applicant) applied for information from the NSW Police Force (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency has decided to provide partial access to the information because there is an overriding public interest consideration against disclosure of the information.
3. The Applicant applied under the GIPA Act to the Agency for access to the following information:

“I was assaulted on my property in the bin area – physically threw me into bins hit head on wooden fence that has steel beam landed up on concrete. Have medical assault certificate.

I am seeking the name of the party/ teenager mate to lodge a victims compensation application”.
4. In its decision issued on 25 November 2015, the Agency decided to provide most of the information in accordance with s58(1)(a) in response to the applicant’s access application. The Agency decided there are public interest considerations both in favour of disclosure and against disclosure. The Agency decided to release the requested information, but with the personal information redacted.
5. The Information Commissioner makes no recommendations in relation to the Agency’s decision.

Decisions under review

6. The decision under review is the Agency’s decision to refuse to provide access to personal information in response to an access application on the basis of an overriding public interest consideration against disclosure of the information.
7. This is a reviewable decision under section 80(d) of the GIPA Act.
8. Under section 97(1) of the GIPA Act, the Agency bears the onus of establishing that their decision is justified in this review.

The public interest test

9. The Applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information (section 9(1) of the GIPA Act). The public interest balancing test for determining whether there is an overriding public interest against disclosure is set out in section 13 of the GIPA Act.
10. The general public interest consideration in favour of access to government information set out in section 12 of the GIPA Act means that this balance is always weighted in favour of disclosure. Section 5 of the GIPA Act establishes a presumption in favour of disclosure of government information.
11. Before deciding whether to release or withhold information, the Agency must apply the public interest test and decide whether or not an overriding public interest against disclosure exists for the information.

12. Section 13 requires decision makers to:
 - a. identify relevant public interest considerations in favour of disclosure,
 - b. identify relevant public interest considerations against disclosure,
 - c. attribute weight to each consideration for and against disclosure, and
 - d. determine whether the balance of the public interest lies in favour of or against disclosure of the government information.
13. The Agency must apply the public interest test in accordance with the principles set out in section 15 of the GIPA Act.

Public interest considerations in favour of disclosure

14. Section 12(1) of the GIPA Act sets out a general public interest in favour of disclosing government information, which must always be weighed in the application of the public interest test. The Agency may take into account any other considerations in favour of disclosure which may be relevant (s12(2) GIPA Act).
15. In its notice of decision, the Agency listed the following public interest considerations in favour of disclosure of the information in issue:

“There is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure”.
16. It is not apparent on what basis there is a public interest consideration in favour of disclosure.
17. An example of a relevant public interest consideration in favour of disclosure is that disclosure could reasonably be expected to promote open discussion of public affairs, and enhance Government accountability.

Public interest considerations against disclosure

18. The only public interest considerations against disclosure that can be considered are those in schedule 1 and section 14 of the GIPA Act.
19. In order for the considerations against disclosure set out in the table to section 14 of the GIPA Act to be raised as relevant, the Agency must establish that the disclosure of the information *could reasonably be expected to have the effect* outlined in the table.
20. The words “could reasonably be expected to” should be given their ordinary meaning. This requires a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from irrational, absurd or ridiculous, to expect the effect outlined.
21. In its notice of decision the Agency raised one public interest consideration against disclosure of the information, deciding that its release could reasonably be expected to reveal an individual’s personal information.

Consideration 3(a) – reveal an individual’s personal information

22. Clause 3(a) of the table at section 14 as a public interest consideration against disclosure states:

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to reveal an individual's personal information.

23. Personal information is defined in the GIPA Act as:

...information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. [Schedule 4(4)(1) GIPA Act]
24. Section 15(b) of the GIPA Act provides that agencies must have regard to any relevant guidelines issued by the Information Commissioner when determining whether there is an overriding public interest against disclosure.
25. The Information Commissioner has published Guideline 4 – Personal information as a public interest consideration under the GIPA Act in December 2011. This Guideline sets out what is meant by 'personal information' in the GIPA Act and includes (in paragraph 1.2) examples of what should be considered personal information
26. In order to establish that this consideration applies, the Agency has to:
 - a. identify whether the information is personal information,
 - b. consider whether the information would be revealed by disclosing it under the GIPA Act.
27. We have reviewed an unredacted copy of the relevant information. Section 91 of the GIPA Act prohibits the Information Commissioner from disclosing the withheld information. However, we are satisfied from our review of the documents that this consideration applies and the information redacted is the personal information of third parties that would be revealed if released.

Balance of public interest

28. The GIPA Act does not provide a set formula for weighting individual public interest considerations or assessing their comparative weight. Whatever approach is taken, these questions must be characterised as questions of fact and degree to which different answers may be given without being wrong, provided that the decision-maker acts in good faith and makes a decision available under the GIPA Act.
29. The Agency dealt with an access application and decided not to disclose the information requested by the Applicant. The decision considered the public interest considerations for and against disclosure and found that the balance was weighed against disclosure. Based on that weighting of the public interest the Agency made a decision to not disclose the information the applicant requested. This is a decision available to the Agency under the GIPA Act.
30. Based on the information provided to us in this review, we are satisfied that the decision made by the Agency was available to it to make.

Recommendations

31. The Information Commissioner is satisfied that the Agency's decision is justified.
32. The Information Commissioner does not make any recommendations in relation to the Agency's decision.

Review rights

33. 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.
34. The Applicant has the right to ask the NCAT to review the Agency's decision.
35. 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

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

Elizabeth Tydd
Information Commissioner