



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

Applicant:	Applicant
Agency:	The NSW Police Force
Report date:	6 June 2017
IPC reference:	IPC17/R000115
Agency reference	527
Keywords:	Government information – whether information is held
Legislation cited:	<i>Government Information (Public Access) Act 2009</i>
Cases cited:	<i>Davison v NSW Department of Education and Training [2013] NSWADT 25</i>

This review has been conducted under delegation by the Information Commissioner pursuant to Section 13 of the *Government Information (Information Commissioner) Act 2009*.

Summary

The Applicant applied for information from the NSW Police Force (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act). The information sought by the Applicant included three questions pertaining to an Agency investigation involving the Applicant's daughter.

In the Agency's decision, it stated that it did not hold the information in a record, and would have to create one in order to provide access to the information sought. The Agency stated that section 75 of the GIPA Act provides that they are not required to create a new record in response to an access application.

The Applicant applied for external review on 13 March 2017. The reviewer obtained information from the Agency including the Notice of Decision and the searches for information undertaken.

The review of the Agency's information and decision concluded that the Agency's decision is not justified.

The reviewer makes the recommendation that the Agency make a new decision by way of internal review.

Background

1. The Applicant applied under the GIPA Act to the Agency for access to the following information regarding what he termed to be investigations conducted by the Agency regarding the Applicant's daughter:
 - a. 'Has such investigations been concluded?'
 - b. 'If so has anyone been charged, or are any charges pending?', and
 - c. 'If the answer to B is yes the name of such accused.'
2. The Agency accepted this as a valid access application, and in its decision issued on 24 February 2017, the Agency decided that they do not hold the information requested. The Agency stated that:

'In response to this application a search was carried out upon the Computerised Operational Policing System (COPS) and the event in relation to the investigation by Child Abuse Squad [location removed] identified however the information requested was not included in the event'.
3. The Agency also makes reference to:
 - a. Section 75 of the GIPA Act, stating the information applied for requires a new record to be created and that the Agency is not required to create a new record in response to the Applicant's access application; and
 - b. *Davison v NSW Department of Education and Training [2013] NSWADT 25*, indicating that the GIPA Act is not an avenue for applicants to pose questions to an agency.
4. In seeking a review of the decision by the Information Commissioner, the Applicant identified that he considers the Agency has failed to comply with section 16 and section 53 of the GIPA Act.

Decision under review

5. The Information Commissioner has jurisdiction to review the decision made by the Agency pursuant to section 89 of the GIPA Act.
6. The decision under review is the Agency's decision that it does not hold the information.
7. This is a reviewable decision under section 80(e) of the GIPA Act.
8. The issue that arise in this review is whether or not the Agency has justified their decision in that the information requested by the Applicant is not held by them.

Searches for information

9. The Applicant has a legally enforceable right to access government information that is relevant to their request.
10. Section 53 of the GIPA Act requires agencies to conduct reasonable searches for government information requested in an access application.
11. Regarding the searches undertaken, and the Agency has advised the IPC that:
 - a. an electronic COPS system search was done
 - b. the only record searched for and found was the COPS event

- c. No enquiries were directed to the Child Abuse Squad because the Agency considers that the Agency is not required to answer questions in response to an access application.
12. It is not known if the information sought by the Applicant would be held by the Child Abuse Squad, as it appears the Agency's searches did not extend to contacting them.
13. In its notice of decision, the Agency refer to the case of *Davison v NSW Department of Education and Training* as an authority to for the GIPA application process not to be used as an avenue for individuals to pose questions and to be provided with appropriate answers, unless the answers are contained in a an existing record by the agency at the time the GIPA application was received.
14. Based on the information the Applicant applied for, I agree with the Agency that the Applicant is seeking answers to questions.
15. Paragraph 3 from *Davison v NSW Department of Education and Training*, states:
'It [a GIPA access application] is not a vehicle for seeking answers to questions a person might have in regard to administrative action taken by a government agency, or seeking an explanation by an agency as to why particular action was taken'.
16. Paragraph 24 states:
'the GIPA Act gives every person an enforceable right to seek access to 'information' 'contained' in a 'record' that is 'held' by the agency: see sections 3, 4 and 41 and clause 12 of Schedule4 [of the GIPA Act]. It is not a vehicle seeking explanations of administrative decisions of a government agency, unless an explanation (the information) is contained in a record of the agency at the time GIPA access requested was made'...
17. The GIPA Act does not prevent applicants from using questions as a way to seek information, as long as the information sought is contained in a record.
18. While I note the Agency has decided that information sought by the Applicant (answers to questions) is not contained in a COPS event, I note that the Agency does not appear to have considered if the information sought by the Applicant is information that is contained in other records held by the Agency, such as any records that may be held by the Child Abuse Squad.
19. The information sought by the Applicant relates to investigations allegedly conducted by the 'Child Abuse Squad [location removed]'. In circumstances where the information sought was not contained in a COPS record, a reasonable search would therefore include a search of records held by the Child Abuse Squad, but such searches were not conducted.
20. Based on this, I am not satisfied that the Agency has undertaken reasonable searches pursuant to section 53 of the GIPA Act.

Agencies to provide advice and assistance

21. Under section 16 of the GIPA Act, the Agency must provide advice and assistance to a person who requests or proposes to request access to government information.

22. If the information sought is not clear due to the use of questions, the Agency should utilise this provision to assist the Applicant in amending the access application to locate records that may contain the information sought.

Conclusions

23. On the information available, I am not satisfied that the Agency has conducted sufficient searches to discharge its obligation under section 53 of the GIPA Act.
24. I am therefore not satisfied that the Agency has justified its decision that the information is not held.

Recommendations

25. I recommend, under section 93 of the GIPA Act, that the Agency make a new decision by way of internal review within 15 working days.
26. I ask that the Agency advise the Applicant and the IPC by 27 June 2017 of the actions to be taken in response to our recommendations.

Applicant review rights

27. This review is not binding and is 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.
28. The Applicant has the right to ask the NCAT to review the Agency's decision.
29. 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>

30. If the Agency makes a new reviewable decision as a result of our review, the Applicant will have new review rights attached to that new decision, and 40 working days from the date of the new decision to request an external review at the IPC or NCAT.

Completion of this review

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