



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

Applicant:	Mr Stuart Redman
Agency:	Gloucester Shire Council
OIC reference:	11-129
Date review request received:	5 May 2011
Date of review report:	15 November 2011

Summary of report

1. We agree with Gloucester Shire Council that there is an overriding public interest against the release of the personal information of a complainant.
2. However, we are not satisfied that the Council has met the requirements of section 61 of the GIPA Act, which provides that an agency must give reasons for its decision.

Our review

3. On 18 April 2011, Mr Redman made an access application to Gloucester Shire Council under the *Government Information (Public Access) Act 2009* (the GIPA Act). He asked for the following information:

“the identity of the complainant re the alleged illegal quarry and operation at 1148 Thunderbolts Way”

4. Mr and Mrs Redman operate an earthmoving company in Gloucester. A member of the public made a complaint to the Council about their earthmoving operations. As a result, a site officer attended their property and carried out an inspection. No further action was taken.
5. Mr Redman wants to know the name of the person who made the complaint. He does not seek any information about the content of the complaint.

6. The Council decided that there is an overriding public interest against the disclosure of the complainant's name. They advised Mr Redman of this in a notice of decision dated 29 April 2011.
7. On 5 May 2011, Mr Redman asked our office to review the Council's decision. In conducting this review, we have spoken with Mr Redman and with the Council, who provided us with their file in relation to the access application. We have reviewed the information provided by both parties and are satisfied that the Council made an appropriate decision under the GIPA Act. Our reasons are set out in this report.

Notice of decision

8. The Council decided to refuse access to the information because of an overriding public interest against disclosure. As such, section 61 of the GIPA Act provides that the Council's notice of decision must include the following:
 - the reasons for the decision to refuse access
 - the findings on any key questions of fact, and the source of the information on which the findings are based
 - the general nature and format of the records that contain the information sought.
9. The Council identified some public interest considerations in favour of disclosure of the information, and two public interest considerations against disclosure of the information. The notice of decision does not provide clear reasons for how and why the considerations apply to the information sought, or how weight was attributed to the considerations.
10. We are not satisfied that the Council has met the requirements of section 61 of the GIPA Act. A copy of 'Requirements for Notices of Decision' is attached to this report [attachment A] to assist the Council when making future decisions.

The public interest test

11. A person who makes an access application for government information has a legally enforceable right to access the information requested unless there is an overriding public interest against disclosure of the information, pursuant to section 9(1) of the GIPA Act.
12. Section 13 of the GIPA Act sets out the public interest test as follows:

There is an **overriding public interest against disclosure** of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.
13. When applying the public interest test, an agency should begin with the general presumption in favour of disclosure of government information provided for at section 5 of the GIPA Act.

14. The agency must then:
 - a. identify further public interest considerations in favour of disclosure;
 - b. identify any public interest considerations against disclosure;
 - c. determine the weight of the public interest considerations in favour of and against disclosure; and
 - d. determine where the balance between those interests lies.
15. Agencies must follow the principles set out in section 15 of the GIPA Act when applying the public interest test.

Public interest considerations in favour of disclosure

16. The GIPA Act does not limit the public interest considerations in favour of disclosure of information that may be taken into account when applying the public interest test.
17. The Council identified Mr Redman's right to access the information unless there is an overriding public interest against disclosure (section 9(1) of the GIPA Act), as well as the presumption in favour of disclosure of government information (section 5 of the GIPA Act). The Council did not raise any further public interest considerations in favour of release of the name of the complainant.
18. Mr Redman submits that there is a public interest in favour of the release of the name as it will allow him to manage the complaint. While there is a public interest in favour of a person knowing the substance of an allegation made against them, in the interests of procedural fairness, we are not satisfied that this extends to the disclosure of a complainant's name.

Public interest considerations against disclosure

19. The only public interest considerations against disclosure that may be taken into account when applying the public interest test are those listed in the table at section 14 of the GIPA Act. The Council raised two public interest considerations against disclosure of the information:
 - a. that disclosure could reasonably be expected to reveal an individual's personal information (Table 3(a)), and
 - b. that disclosure could reasonably be expected to expose a person to a risk of harm or of serious harassment or serious intimidation.
20. The Council also took into account the complainant's objection about the release of their name.

Section 14 Table 3(a) – Reveal an individual's personal information

21. Section 14 Table 3(a) provides that there is a public interest consideration against the disclosure of information if the disclosure could reasonably be expected to "reveal an individual's personal information".

22. A person's name is their personal information and in this instance that information has not already been revealed to Mr Redman. We are therefore satisfied that this is a relevant consideration to be taken into account when applying the public interest test.

Section 14 Table 3(f) – Expose a person to a risk of harm

23. The Council decided that the release of the complainant's name could reasonably be expected to "expose a person to a risk of harm or of serious harassment or serious intimidation" (section 14 Table 3(f) of the GIPA Act).
24. In its notice of decision, the Council did not provide any reasons as to why this consideration applies to the information. They did not give any evidence or findings of material fact that show that there could be a risk of harm or of serious harassment or serious intimidation. Without any evidence, we cannot be satisfied that this consideration applies to the information. It therefore should not be considered when applying the public interest test.

The complainant's objection about the release of their name

25. Section 54 of the GIPA Act provides that an agency must consult with a person before releasing their personal information in order to ascertain whether they have an objection to the release of the information. Any objection must be taken into account when balancing the public interest test, in accordance with section 54(5) of the GIPA Act. We note that an objection to the release of information is relevant to the public interest test but does not in itself constitute an overriding public interest against disclosure.
26. The Council consulted with the complainant about releasing their name to Mr Redman, in accordance with section 54 of the GIPA Act. The complainant objected to the release of the information. We agree with the Council that the objection should be taken into account when applying the public interest test.

Other public interest considerations against disclosure

27. We believe that there may be other public interest considerations against disclosure of the complainant's name, stemming from the fact that complaints are often made to a Council on the basis of an express or implied understanding of confidentiality.
28. We have not taken any such considerations into account when balancing the public interest test. That is because they were not raised by the Council and we are already satisfied that there is an overriding public interest consideration against the release of the complainant's name, without looking at further considerations. However, we suggest that the Council turn its mind to possible considerations arising from confidentiality when making future decisions about information provided by complainants.

Balancing the public interest

29. Mr Redman has asked only for the name of the complainant and not the substance of the complaint. We believe that there is a strong public interest against the release of the name, as it would reveal the complainant's personal information. We recognise

that there is a public interest in releasing the substance of a complaint as it promotes accountability and procedural fairness. However, the strength of those considerations is diminished in this instance, given that the complaint has already been revealed to Mr Redman. All that remains outstanding is the name of the person who made the complaint. We do not consider that the release of that name would further the public interest, but rather a personal interest. Therefore, we are satisfied that the public interest against disclosure of personal information overrides the general presumption and other considerations in favour of release.

30. The Council applied the public interest test and made a decision that is available to them under the GIPA Act. However, the Council has not clearly demonstrated this in its notice of decision and should take care in future decisions to provide clear reasons for not releasing information, in line with section 61 of the GIPA Act.

Our recommendation

31. We uphold the Council's decision that there is an overriding public interest against the disclosure of the complainant's name.
32. We recommend that the Council consider the comments in this report, in particular the requirements of section 61 of the GIPA Act, when making future decisions about access applications.

H Review rights

33. Our recommendations 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.
34. If Mr Redman is dissatisfied with our findings then he may ask the ADT to review the Council's original decision.
35. An application for ADT review can be made up to four weeks from the date of this report, that is by **13 December 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**

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I Questions?

36. This review is now closed.

37. If you have any questions about this report please contact us on 1800 472 679.