



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

Applicant:	Mr N
Agency:	Office of Liquor, Gaming and Racing (Department of Trade & Investment)
OIC reference:	11-392
Date review request received:	18 November 2011
Date of this report:	31 January 2012

Summary of this report

1. Mr N applied under the *Government Information (Public Access) Act 2009* (the GIPA Act) for information relating to an investigation conducted by the Office of Liquor, Gaming and Racing (**OLGR**). The information requested includes material concerning the original complaint upon which the investigation was based and documents created by the OLGR in the course of its investigation.
2. The OLGR released some information from the investigation file but withheld a small amount of information. It refused to provide access to the original letter of complaint and the name of the complainant as it thought there was a conclusive presumption of an overriding public interest against disclosing this information pursuant to clause 1 of Schedule 1 of the GIPA Act.
3. OLGR redacted the complainant's personal information from the information it gave to Mr N. In doing so it also transcribed the complaint letter and paraphrased part of the letter as it considered that the handwriting of the complainant and the details that were paraphrased could identify the author.
4. Our view is that the OLGR has incorrectly applied the provisions of clause 1 of Schedule 1 of the GIPA Act. However, we have decided not to make any recommendations in this report because we agree that the information withheld by OLGR should not be disclosed.

The decision

5. Pursuant to section 80(d) of the GIPA Act, we are reviewing OLGR's decision to refuse access to information.
6. In refusing access to information, the OLGR referred to clause 1 of schedule 1 to the GIPA Act as the basis for its refusal. This clause provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information which is prohibited from being disclosed under section 17 of the *Casino, Liquor and Gaming Control Authority Act 2007*. This section refers to secrecy of information acquired in the exercise of functions under the gaming and liquor legislation.
7. Section 4 of the *Casino, Liquor and Gaming Control Authority Act 2007* defines the meaning of 'gaming and liquor legislation' to the Acts, regulations and instruments made under the:
 - (a) *Casino, Liquor and Gaming Control Authority Act 2007*
 - (b) *Casino Control Act 1992*
 - (c) *Gaming Machines Act 2001*
 - (d) *Liquor Act 2007*
 - (e) *Registered Clubs Act 1976*.
8. The complaint that Mr N sought access to was not investigated under any of these pieces of legislation. The investigation was conducted under the *Charitable Fundraising Act 1991*, which is not referred to in clause 1 of schedule 1 to the GIPA Act.
9. This means that there is no conclusive presumption of an overriding public interest against disclosure of the information contained in the original complaint. This being the case, the information must be released unless there is an overriding public interest against disclosure, determined by applying the public interest test. The public interest test is discussed below.

The public interest test

10. Before deciding whether to release or withhold information, an agency must apply the public interest test and decide whether or not an overriding public interest against disclosure applies to the information.
11. Section 13 of the GIPA Act sets out the public interest test. It requires an agency to undertake the following steps:
 - Step 1** identify the relevant public interest considerations in favour of disclosure
 - Step 2** identify the relevant public interest considerations against disclosure. These are limited to those described in section 14 of the GIPA Act
 - Step 3** determine the weight of the public interest considerations in favour of and against disclosure and where the balance between those interests lies.

12. The OLGR has identified that there is a public interest consideration in favour of Mr N being aware of the substance of the complaint that was received. It has also recognised the presumption in favour of disclosing government information found in section 5 of the GIPA Act.
8. Public interest considerations against disclosure must also be identified. While the notice of decision incorrectly refers to the provisions of Schedule 1 of the GIPA Act, we consider that disclosure of the information could reasonably be expected to reveal an individual's personal information (section 14T(3)(a) of the GIPA Act). We note that personal information is defined in clause 4 of schedule 4 to the GIPA Act as "information... about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion."

Our view

18. We agree with OLGR's decision to release the majority of the information requested by Mr N.
19. We have reviewed the information that was not disclosed to Mr N and agree that releasing it would reveal an individual's personal information. In view of OLGR's transcription of the substance of the complaint, we consider that the public interest consideration against disclosing the individual's personal information overrides the public interest considerations in favour of disclosure.
20. OLGR did not correctly apply the public interest test because it did not correctly identify the relevant public interest consideration against disclosure. However, we have decided not to recommend that it reconsider its decision. This is because we agree that the information withheld by OLGR should not be disclosed (albeit for a different reason).

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 Administrative Decisions Tribunal (ADT) for a review of that decision.
22. If Mr N is dissatisfied with our view, he may ask the ADT to review the original decision of the agency.
23. An application for ADT review can be made up to four weeks from the date of this report (that is by **28 February 2012**). After this date, the ADT can only review the decision if it agrees to extend this deadline.
24. For information about the process and costs associated with a review by the ADT, please contact the ADT. The ADT's contact details are:

Administrative Decisions Tribunal
Level 10, 86 Goulburn Street,
Sydney, NSW, 2000
Telephone (02) 9377 5711
Facsimile (02) 9377 5723
TTY (02) 9377 5859

Internet <http://www.lawlink.nsw.gov.au/adt>

e-mail ag_adt@agd.nsw.gov.au

Closing our file

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

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