



information
and privacy
commission
new south wales

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

Applicant: Jason Banks
Agency: City of Sydney Council
Report date: 16 January 2015
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Summary

1. Jason Banks (the Applicant) applied for information from the City of Sydney Council (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency decided that there is an overriding public interest against disclosure of the information.
3. The Information Commissioner recommends that the Agency reconsider the decision by way of internal review. The reasons for this decision are outlined in this report.

Background

4. The Applicant applied to the Agency for access to CCTV footage from the camera 276 located on the corner of Elizabeth and Foveaux Streets at approximately 7.30 am to 8.30 am on 6 May 2014.
5. The Applicant stated that the camera may have captured an alleged incident on Chalmers Street, near the bus shelters at Central Station, when persons identifying themselves as plain clothes police officers seized the Applicant's bag and made threats towards the Applicant.
6. In its decision issued on 4 July 2014, the Agency stated that it conducted a search for information held within the scope of the application and found CCTV footage from the camera 276 located on the corner of Elizabeth and Foveaux Streets between 7.30 am and 8.30 am on 6 May 2014.
7. The Agency decided that there is an overriding public interest against disclosure of the information.
8. In seeking a review of the decision by the Information Commissioner, the Applicant confirmed that they are requesting that the Agency reconsider its decision and make a new decision having regard to the requirements under the GIPA Act.

Decisions under review

9. The decision under review is the Agency's decision to refuse to provide access to information.

The public interest test

10. 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.
11. 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.

12. 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.
13. 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.
14. 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

15. 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).
16. In its notice of decision, the Agency stated that:
 - a. Under the GIPA Act there is a general public interest in favour of disclosing government information and;
 - b. The GIPA Act sets out some examples of other public interest considerations in favour of disclosure.
17. In its notice of decision, the Agency has not identified or attributed a weight to the relevant public interest considerations in favour of disclosure.

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 two public interest considerations against disclosure of the information, deciding that its release could reasonably be expected to:
 - a. reveal an individual's personal information (clause 3(a) of the table to section 14 of the GIPA Act); and
 - b. contravene an information protection principle under the *Privacy and Personal Information and Protection Act 1998* or a Health Privacy

Principle under the *Health Records and Information Privacy Act 2002* (clause 3(b) of the table to section 14 of the GIPA Act).

22. I will discuss each of these considerations in turn.

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

23. 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.

24. Personal information is defined in the GIPA Act as being:

...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]

25. In order to establish that this consideration applies, the Agency has to:
- identify whether the information is personal information
 - consider whether the information would be revealed by disclosing it under the GIPA Act.
26. In its notice of the decision, the Agency stated that the CCTV footage clearly identifies individuals and releasing the footage to the Applicant would reveal personal information.
27. In its notice of decision, the Agency has not attributed a weight to the public interest consideration against disclosure.
28. The Office of the Information Commissioner has viewed the CCTV footage and is satisfied that the footage contains individuals’ personal information and that releasing the footage could reasonably be expected to reveal individuals’ personal information.
29. The Information Commissioner is therefore satisfied that the Agency has justified its decision in accordance with section 97 of the GIPA Act.

Consideration 3(b) – contravene an information protection principle or a Health Privacy Principle

30. Clause 3(b) of the table at section 14 states:

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 or a Health Privacy Principle under the Health Records and Information Privacy Act 2002.

31. If an agency relies on clause 3(b) of the table to section 14 as a consideration against disclosure, it must demonstrate a reasonable expectation that an information protection principle or health privacy principle would be contravened by disclosure of the information.

32. It is not sufficient to simply assert that such a contravention would occur. The agency must identify the principle(s) that would be contravened and show how the disclosure would breach the principle.
33. In its notice of decision, the Agency stated that its street safety camera system is subject to privacy protection controls and that access to recorded material will be only for purposes provided for in the Agency's Code of Practice or other applicable laws including the GIPA Act and *Privacy and Personal Information Protection Act 1998*.
34. The Agency has not identified any information protection principles or Health Privacy Principles or provided sufficient detail on how the principles would be contravened by the disclosure of the CCTV footage.
35. The Information Commissioner is therefore not satisfied that the Agency has justified its decision in accordance with section 97 of the GIPA Act.

Personal factors of the application

36. Section 55(1) of the GIPA Act states in determining whether there is an overriding public interest consideration against disclosure of information in response to an access application, an agency is entitled to take the following factors into account:
 - a. the applicant's identity and relationship with any other person;
 - b. the applicant's motives for making the access application; and
 - c. any other factors particular to the applicant.
37. In its notice of decision, the Agency states that it can take into account any personal factors of the application.
38. The Agency has not identified any personal factors of the application or whether they have been taken into account in determining that there is an overriding public interest against disclosure of information.

Balance of the public interest test

39. Notwithstanding that the Agency has identified a relevant public interest consideration against disclosure of government information, in accordance with section 13 of the GIPA Act, the Agency has not provided sufficient detail as to whether, on balance, the public interest consideration against disclosure outweighs the public interest considerations in favour of disclosure.

Recommendations

40. The Information Commissioner recommends under section 93 of the GIPA Act that the Agency make a new decision, by way of internal review within 15 working days.
41. In making a new decision, have regard to the matters raised and guidance given in this report.
42. We ask that the Agency advise the Applicant and us by **2 February 2015** of the actions to be taken in response to our recommendations.

Review rights

43. 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.
44. The Applicant has the right to ask the NCAT to review the Agency's decision.
45. 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>
46. 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

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

Elizabeth Tydd
Information Commissioner