

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

Applicant: The Applicant
Agency: Tweed Shire Council
Report date: 06 July 2016
IPC reference: IPC16/R000388
Keywords: Government information – information not held

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Summary

1. The Applicant applied for information from the Tweed Shire Council (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency decided to provide access to the information it holds and decided that some of the requested information is not held.
3. The Information Commissioner concludes that the Agency's decision is justified and makes no recommendations in relation to the Agency's decision.

Background

4. The Applicant applied under the GIPA Act to the Agency for access to the following information:

Recent independent arborist report of condition of memorial pine trees and weeping figs in Cudgeon and Council's arborist report of same to help find a solution to why pine trees are dying and weeping figs were removed.
5. In its decision issued on 23 June 2016, the Agency decided to provide access to the Agency's arborist report and decided that an independent arborist report is not held.
6. In seeking a review of the decision by the Information Commissioner, the Applicant stated that he was told that the Agency had all the trees inspected by an independent arborist this year. He seeks the assistance of the IPC to obtain the information which he believes the public should have access to.
7. The Information Commissioner's powers of review are set out in Part 5, Division 3 of the GIPA Act, which provides that the Information Commissioner can make recommendations in respect of an Agency's decision.

Decision under review

8. The decision under review is the Agency's decision that some information is not held, which is a reviewable decision under section 80(e) of the GIPA Act.

Decision that information is not held

9. The Agency decided that it does not hold the independent arborist report. Before deciding that information is not held, an agency must comply with the requirements of section 53(2) of the GIPA Act. It must undertake reasonable searches as may be necessary to find any of the information applied for that was held by the agency when the application was received. The agency's searches must be conducted using the most efficient means reasonably available.
10. In *Smith v Commissioner of Police [2012] NSWADT 85*, Judicial Member Isenberg said at paragraph 27:

In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:

- (a) *are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so,*
- (b) *have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case.*
11. When considering whether there are reasonable grounds to believe that information exists and whether searches to locate information were reasonable, the facts, circumstances and context of the application are relevant. Key factors in making an assessment about reasonable searches include “the clarity of the request, the way the agency’s recordkeeping system is organised and the ability to retrieve any documents that are the subject of the request, by reference to the identifiers supplied by the applicant or those that can be inferred reasonably by the agency from any other information supplied by the applicant” (*Miriani v Commissioner of Police, NSW Police Force [2005] NSWADT 187* at [30]).
 12. On page 2 of the notice of decision, the Agency describes the searches undertaken of its records management system, including a list of search terms employed. The search revealed one Agency arborist’s report and that the Agency does not hold the independent arborist report as requested.
 13. During the course of this review, the Agency provided further details with respect to searches undertaken, including reports of discussions with relevant staff who confirmed that the information is not held.
 14. We are satisfied, based on the information before us, that the search efforts of the Agency have been reasonable in the circumstances of the case and that the Agency does not hold the requested information.

Conclusion

15. The Information Commissioner concludes that the decision of the Agency is justified pursuant to section 97(1) of the GIPA Act and makes no recommendations in relation to the decision.

Review rights

16. 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.
17. The Applicant has the right to ask the NCAT to review the Agency’s decision.
18. 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

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

Elizabeth Tydd
Information Commissioner