



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

Applicant: Applicant
Agency: NSW Police Force
Report date: 9 June 2016
IPC reference: IPC16/R000233
Keywords: Government information – invalid application – requirement to assist an applicant to make a valid application

Contents

Contents	1
Summary.....	2
Background.....	2
Decisions under review	2
Decision as to validity of application.....	2
Recommendations	3
Review rights.....	4
Completion of this review.....	4

Summary

1. The Applicant applied for information from the NSW Police Force (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency decided that the application is invalid, as there was insufficient information to enable the Agency to locate the information requested.
3. The Information Commissioner makes the following recommendations in relation to the Agency's decision:
 - a. that the Agency reconsider its decision that the application is invalid, pursuant to section 93 of the GIPA Act; and
 - b. in doing so, adopt the guidance in this report, to provide such assistance with an invalid application, as required by section 52 of the GIPA Act.

Background

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

The incident report and CCTV/video of an assault on a bus driver at midnight on 19 September 2015. The bus was on route 350 and stopped at the intersection of the Pacific Highway and South Street, Windale (Newcastle region). The CCTV ... goes for about three minutes and shows the offender spitting on the driver and punching him several times in the head. He also punches the security screen. I consent to being provided an edited copy of the documents/footage with personal details redacted/pixelated.
5. In its decision issued on 18 March 2016, the Agency decided that the application was invalid and unable to be accepted, because there was insufficient information to enable the Agency to locate the information requested.
6. In seeking a review of the decision by the Information Commissioner, the Applicant confirmed that the Agency did not attempt to consult with her about the application.

Decisions under review

7. The decision under review is the Agency's decision that the application is invalid. This is a reviewable decision pursuant to section 80(a) of the GIPA Act.

Decision as to validity of application

8. Section 51 of the GIPA Act provides that when an agency receives an access application for government information, the agency is to decide whether the application is valid and to notify its decision to the applicant by either:
 - a. acknowledging receipt of the valid application; or
 - b. notifying the applicant that the application is not valid.

9. The Agency's notification of an invalid application issued on 18 March 2016 did not comply with all elements required by section 52(1) of the GIPA Act, which provides that the notification must:
 - (a) *include a statement of the reason why the application is not a valid access application (including reference to the relevant provisions of this Act), and*
 - (b) *if a reason is non-payment of the required application fee, invite the applicant to pay the fee, and*
 - (c) *if a reason is failure to provide required information, invite the applicant to provide the information, and*
 - (d) *notify the applicant of the right of review under Part 5 that applies in relation to a decision that an application is not a valid access application.*
10. The notification explained that the application was not valid because the information provided was insufficient to identify the incident in question. It explained that to enable searches to be conducted, the Agency requires either the COPS event number, or the police station the incident was reported to and the date it was reported and the name of the person reporting.
11. We are satisfied as to the Agency's explanation with respect to this instance, which is verified in additional information provided to us during the course of this review.
12. The Agency provided us with details regarding the searches it conducted for the information in question and confirmed that no record of the incident was located with the information provided. The Agency indicated that while location can be searched in COPS, there is no provision to enter a date, therefore the search conducted for "South Street, Windale" revealed more than 1000 entries relating to properties on South Street. A search of "Pacific Highway, Windale" resulted in an unrelated event.
13. Our conclusion is that the notification did not invite the Applicant to provide the information as required by section 52(1)(c) of the GIPA Act.
14. We draw the Agency's attention to section 52(3) of the GIPA Act, which provides that:

An agency must provide advice and assistance, so far as it would be reasonable to expect the agency to do so, to assist an applicant to provide such information as may be necessary to enable the applicant to make a valid access application.

Recommendations

15. The Information Commissioner makes the following recommendations in relation to the Agency's decision:
 - a. that the Agency reconsider its decision that the application is invalid, pursuant to section 93 of the GIPA Act; and
 - b. in doing so, adopt the guidance in this report, to provide such assistance with an invalid application, as required by section 52 of the GIPA Act.

16. We ask that the Agency advise the Applicant and us by **10 working days of the date of this review** of the actions to be taken in response to our recommendations.

Review rights

17. 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.
18. The Applicant has the right to ask the NCAT to review the Agency's decision.
19. 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>

20. 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

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

Elizabeth Tydd
Information Commissioner