



Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Wendy Bacon
File Ref:	GIPAA – 2016/17-042
Decision maker:	Ramani Warusevitane, Access to Information & Privacy Advisor
Date of decision:	7 December 2016

1. Summary of access application

We received your access application under the *Government Information (Public Access) Act 2009* (the GIPA Act) on 5 October 2016 to obtain the following information:

“All documents relating to the New M5 Instrument of Approval Condition B10-13 (which deal with Biodiversity) since the date of approval, April 20, 2016. I consent in advance to removal of any home addresses or home phone numbers”

Your application was invalid under section 41 of the GIPA Act as you had not provided a valid postal address or paid the application fee.

Your application became valid on 11 October 2016.

On 11 October 2016 you narrowed the scope of your application to the following:

“All Briefing Notes and Reports relating to the New M5 Instrument of Approval Condition B10-13 (which deal with Biodiversity) since the date of approval, April 20, 2016. I consent in advance to removal of any home addresses or home phone numbers”

On 7 December 2016 you agreed to exclude information subject of third party objections.

2. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application. The Planning Services Division searched the Department’s records to find any information falling within the scope of your amended request.

I have prepared a Schedule of documents (the Schedule) provided by the Planning Services Divisions, itemising the information referred to in this determination. The Schedule is attached.

3. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

I have decided, under section 58(1)(a) of the GIPA Act, to **provide access to the information falling within the scope of your amended application.**

In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

- (a) the reasons for my decision and the findings on any important questions of fact underlying those reasons; and
- (b) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure (see the attached Schedule of Documents).

You can ask for a review of this decision. For details about how to do so, see part 8 of this Notice.

4. The public interest test

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

- (a) identifying any public interest considerations in favour of disclosure;
- (b) identifying any relevant public interest considerations against disclosure; and
- (c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- (a) in a way that promotes the objects of the GIPA Act;
- (b) with regard to any relevant guidelines issued by the Information Commissioner;

- (c) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
- (d) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- (e) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

4.1 Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

I find the following considerations in favour of disclosure are relevant to your application:

Disclosure of information could reasonably be expected to inform the public about the operations of the Department.

4.2 Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act. To show that they are relevant to the information you asked for, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

4.3 Consultation and consideration of third party objections

The information that you asked for includes information that is personal, business, commercial professional or financial interests of third parties. I was therefore required, under section 54 of the GIPA Act, to consult with the relevant third parties before making a determination to release the information.

The third party business entities I consulted objected to the release of all the information.

4.4 Balancing the public interest test

I have considered the relevant public interest considerations in favour of and against disclosure of the information falling within the scope of your amended request.

As you agreed to exclude the information subject of third party objections, there are no public interest considerations against the disclosure of the remainder of the information which is subject of this determination.

Accordingly there are no overriding public interest against the disclosure of the information subject of this determination.

5. Access

5.1 Form of access

You will be given a copy of the information upon payment of the processing charges. Information relating to the processing charges is provided at part 6 of this Notice.

5.2 Access period

You have six months to access the information, as set out in section 77(1) of the GIPA Act. The access period starts from the date of this Notice of Decision. Therefore, you need to access the information before 7 June 2017.

If you need further time to access the information, please contact me on the details provided below.

6. Processing charges

Under sections 64(1) and (2) of the GIPA Act, we may require you to pay processing charges, at a rate of \$30 per hour, for the time spent dealing with your access application. Under section 127 of the GIPA Act, I have determined to provide you with a 50% discount of the processing charges.

The application fee of \$30 counts as payment for the first two hours of the processing charges.

You are requested to pay processing charges of **\$8.75**. Please find attached a Table of Processing Charges, which shows how time was spent processing your application and the charges that apply.

You can ask for a review of the decision to impose processing charges. For information about how to do so, see part 8 of this Notice.

7. Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

In the letter acknowledging receipt of your valid application, sent on **18 October 2016** you were told about the disclosure log. You were also advised of your right to object to the inclusion of details

about your access application in the disclosure log, in certain circumstances (for example, if you seek access to your own personal information).

You did not object to details about your application being included in the disclosure log.

This decision is reviewable under section 80(m) of the GIPA Act (see part 8 of this notice for information about your review rights).

8. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns. My contact details are set out below.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me;
- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

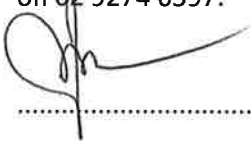
You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au.

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).

9. Further information

If you have any questions about this notice or would like any further information, please contact me on 02 9274 6597.



Ramani Warusevitane

Access to Information & Privacy Advisor

SCHEDULE OF DOCUMENTS

GIPAA File number: 2016-2017:042

Doc No	Folio no.	Date	Description	Action
1	1-2	31/05/2016	Memorandum - Biodiversity Offset Strategy	Release
	3		Tab A - Condition B12	Release
	4-5	11/05/2016	Tab B - Correspondence; Roads & Maritime	Release
	6	31/05/2016	Tab H - Correspondence: Roads & Maritime	Release
2	7-8	4/08/2016	Memorandum - Biodiversity Offset Credits	Release
	9	Undated	Tab A - Condition B10	Release
	10	27/07/2016	Tab B - Correspondence; Proponent	Release
3	11	14/09/2016	Memorandum - Reporting Intervals for Conditions	Release
	12	Undated	Tab A	Release
	13-14	31/05/2016	Tab B - Correspondence; Progress Report	Release
	15-16	4/08/2016	Tab C - Correspondence; Roads & Maritime	Release
	17	24/08/2016	Tab D - Correspondence	Release



Government Information (Public Access) Act 2009

ACCOUNT

Applicant's Name: Wendy Bacon
Our reference: 2016/17-042
Date: 7 December 2016

SCHEDULE OF PROCESSING CHARGES

Nature of Processing Action	Time taken	Cost
File searches, locating and retrieving documents	1 hour 30 minutes	
Assessment of documents, identification of third parties	2 hours	
Listing / preparation of schedule of documents	30 minutes	
Third party consultation	4 hours	
Photocopying / scanning	30 minutes	
Administration / redactions / correspondence	45 minutes	
Determination	0 minutes	
Total time charged (to the nearest 15 min)	9 hours 15 minutes	
Minus application fee (\$30)		\$30.00
Advance Deposit (\$100)		\$100.00
Amount owing		\$8.75

Processing charges for this application have been calculated at the rate of \$15.00 per hour.

Please arrange for a cheque or money order for the above amount, payable to the Department of Planning, to be sent to:

The Information & Privacy Advisor
Public Access to Information & Privacy Unit
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Payment of this account should be received within 180 days of the receipt of this letter.