INNER WEST COUNCIL

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	[redacted]
File Ref:	16/SF151
Decision maker:	Rad Miladinovic
Date of decision:	Initial: 15 April 2016 Final: 14 June 2016

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1. Summary of access application

On 19 February 2016 we received your access application under the *Government Information (Public Access 2009* (GIPA Act).

You asked for the following information:

I'd like to know how much we spent on the development of the new My Marrickville smart phone applications. So I'd like to make an informal access application for all invoices since 1 January 2015 from the application developer, which appears to be Acresta Mobile. If there's a better way to request this information or if it would assist if I changed the scope of my request, I'm happy to do so. If you're unable to process this request as an informal access application, please consider this a formal GIPA request.

2. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act (*Access applications*), to decide your access application. I have decided, under section 58 (*How applications are decided*) of the GIPA Act:

- [x] (a) To provide access to the information
- [ ] (b) That the information is not held by the agency
- [ ] (c) That the information is already available to the applicant
- [ ] (d) To refuse to provide access to the information because there is an overriding public interest against disclosure of the information
- [ ] (e) To refuse to deal with the application
- [ ] (f) To refuse to confirm or deny that the information is held by the agency because there is an overriding public interest against disclosure of information confirming or denying that fact.

In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 (*Notice of decision to refuse to provide* access) of the GIPA Act, I need to tell you:

(a) The reasons for my decision
(b) The findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based,
(c) The general nature and the format of the records held by the agency that contain the information concerned.

Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application. I have searched our records to find any information that falls within the scope of your application.

Details of Search History:

Review of invoices, consultation with Manager Customer Service.

4. The public interest test

Under section 9(1) (*Access applications*) 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 (*Presumption in favour of disclosure of government information*) 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 (*Public interest test*)of the GIPA Act.

I applied the public interest test by:

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

I did this in the way required by section 15 (*Principles that apply to public interest determination*) of the GIPA Act, which is:

- So as to promote the object of the Act
- With regard to any relevant guidelines issued by the Information Commissioner
- That disclosure of information might cause embarrassment to, or a loss of confidence in, the Government is irrelevant and must not be taken into account
- That disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account
- With consideration that disclosure cannot be made subject or any conditions or use or disclosure of information

4.1 Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act (*Public interest considerations in favour of disclosure*), 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:

☑ (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability, or contribute to positive and informed debate on issues of public importance.

☐ (b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with the public.

☑ (c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

☐ (d) The information is personal information of the person to whom it is to be disclosed.

☐ (e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper, or unlawful conduct.

☐ (f) Other

Comments:

4.2 Personal factors of the application

I can also take into account any personal factors of your application, under section 55 (*Consideration of personal factors of application*) of the GIPA Act. I have considered:

4.3 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 (*Public interest considerations against disclosure*) 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. I have identified the following considerations against disclosure as being relevant to your application:

- ☐ 1 Responsible and effective government
- ☐ 2 Law enforcement and security
- ☐ 3 Individual rights, judicial processes, and natural justice
- ☑ 4 Business interests of agencies and other persons
- ☐ 5 Environment, culture, economy, and general matters
- ☐ 6 Secrecy provisions
- ☐ 7 Exempt documents under interstate Freedom of Information legislation

Details:

Billing details and the company's banking information have been withheld in accordance with sec14(4)(b) commercial-in-confidence provisions of a government contract and sec14(4)(d) prejudices legitimate business, commercial, and financial interests.

Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

4.4 Consultation

☐ N/A

The information that you asked for includes information that is personal or protected information of a third party. I was therefore required, under section 54 of the GIPA Act (*Public interest considerations*), to consult with those people before releasing the information.

- ○ There were no objections to the release of the information
- ◉ There was an objection to the release of the information:

When consulted the third party objected in full and cited sec14(4)(b): commerical-in-confidence provisions of a government contract and sec14(4)(d) prejudices legitimate business, commercial, and financial interests.

The objection(s) does/do not mean that I cannot release the information. However, I must take it/them into account when making my decision. I have therefore considered them when applying and balancing the public interest test (comments above).
Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

4.5 Balancing the public interest test

I have considered the relevant public interest considerations in favour of and against disclosure of the information you requested.

Summary:

We consider it to be in the public interest to make the total price paid for the My Marrickville App available. We reached an agreement with the third party to redact specific billing details to protect their privacy while also making the total cost available.

Having weighed up the considerations, I have decided that:

- ○ There are no overriding considerations against disclosure
- ◉ There are overriding considerations against disclosure of *some* of the information
- ○ There are overriding considerations against disclosure of *all* of the information

This is summarised in the attached Schedule of Documents.
Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

5. Release of additional information ☑ N/A

I have decided to provide you with the following additional information as it may interest you:

Section 76 (*Providing access to information not applied for*) of the GIPA Act allows me to do this.

6. Access

6.1 Form of access

In accordance with sections 72-75 (*Forms of Access, Access to be unconditional, Deletion of information from copy of record to be accessed, Providing access by creating a new record*) of the GIPA Act you will be provided access to the released information in the following way:

○ (a) A reasonable opportunity to inspect a record containing the information

◉ (b) A copy of the record containing the information

○ (c) Access to a record containing the information, together with such facilities as may be necessary to enable the information to be read, viewed, or listened to (as appropriate to the kind of record concerned)

○ (d) A written transcript of the information in the case of information recorded in an audio record or recorded in shorthand or other encoded format.

Details:

15/04/16 Document withheld pending the expiry of review rights.
14/06/16 Document released in part; enclosed with this letter.

Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

6.2 Access period

You have six months to access the information, as set out in section 77(1) (*Period within which access rights must be exercised*) of the GIPA Act. The access period starts from the date of this Notice of Decision.

You must access the information BEFORE: N/A

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

6.3 Deferral of access

☑ N/A

Under section 78 of the GIPA Act (*Deferral of access*), I have decided to defer your access to some of the information. This is because:

○ (a) The information is contained in a record (or a draft of or extract from a record) that, by or under this Act or some other legislative instrument, is required to be published but is yet to be published

○ (b) The information is contained in a record (or a draft of or extract from a record) that has been prepared for presentation to Parliament, or that has been designated by the responsible Minister for the agency as appropriate for presentation to Parliament, but is yet to be presented

○ (c) The information is contained in a record (or a draft of or extract from a record) that has been prepared for submission to a particular person or body, or that has been designated by the responsible Minister for the agency as appropriate for submission to a particular person or body, but is yet to be submitted

You will therefore be given that information after:

Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

6.4 Third party review rights

☐ N/A

As set out earlier in this Notice, I consulted with the aforementioned third parties about your application and they objected to the information being disclosed. Since I have decided to give you access to some of the information, despite the objections, they are entitled to ask for a review of the decision to disclose the information under section 80(d) of the GIPA Act (*Which decisions are reviewable decisions*). Please see Part 9 of this notice for more information about review rights.

Any third parties who objected have 40 working days to ask for a review and I cannot release the information to you while their review rights are pending, or while the decision is under review.

- If a third party asks for a review of the decision, I will let you know.
- If a third party does not seek a review, I will release the information to you on: **Expired 14/6/16**

7. Processing charges

☑ N/A

Under sections 64(1) and (2) of the GIPA Act (*Processing charges for dealing with access application*), we may require you to pay processing charges, at a rate of $30 per hour, for the time spent dealing with your access application. The application fee of $30 counts as payment of one hour of the processing charges.

You are requested to pay processing charges of:

Please find attached a Table of Processing Charges, which shows how time was spent processing your application and the charges that apply, including any waivers or discounts applied.
Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 8 of this Notice.

Access is conditional on payment of processing charges, under section 64(4) of the GIPA Act.
Please contact me on the details provided below to organize payment.

8. 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 division 4 of the GIPA Act (*Disclosure log of access applications*).

In the letter acknowledging receipt of your valid application, sent on: 26 April 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 objected to details about your application being included in the disclosure log on:

Because:	
Comments:	

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

I have decided that the information would be of interest to other members of the public and will therefore record the following details in our disclosure log, which is publicly available on our website:

(a) The date the application was decided
(b) A description of the information to which access was provided in response to the application
(c) A statement as to whether any of the information is now available from the agency to other members of the public and (if it is) how it can be accessed.
Note: These decisions are reviewable under Part 5 of the GIPA Act (*Review of decisions)*; see Part 9 of this Notice.

9. 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 (*Review of decisions*). 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 this agency (by an officer of this agency who is no less senior than me);
- Review by the Information Commissioner (external review); or
- Review by the NSW Civil and Administrative Tribunal (NCAT) (external review).

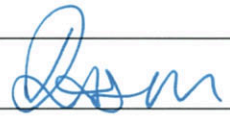
You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled *Your Rights to Review and Appeal*. 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).

10. Further information

If you have any questions about this notice or would like any further information, please contact:

Jennifer Robinson: Jennifer.Robinson@Marrickville.NSW.GOV.AU or 9335-2072

Signature: 

Print: Rad Miladinovic

Date: 14 June 2016

Title: Coordinator, Governance and Administration

YOUR RIGHTS TO REVIEW AND APPEAL

Reviewing a Decision

If you are dissatisfied or aggrieved with certain decisions or determinations made by Council you can apply to have those decisions reviewed under the Government Information (Public Access) Act 2009 (GIPA Act). Section 80 of the GIPA Act sets out the types of decisions made by Council which can be reviewed.

Reviewing a Decision through Council

Under s83 of the GIPA Act an applicant has 20 working days from the date they were informed of Council's decision to apply for it to be reviewed. Applicants are charged a $40 fee for an internal review; however processing charges do not apply to internal review applications. A person can apply for an internal review in the following circumstances (s82):

1) *A person aggrieved by a reviewable decision of an agency is entitled to a review of the decision by the agency that made the decision (which is referred to in the Part as an internal review).*
2) *Internal review of a decision is not available if the decision is made by the principal officer of the agency or if the agency is a Minister.*
3) *An internal review can be limited to a particular aspect of a reviewable decision (such as by being limited to particular information to which the decision relates).*
4) *There is to be no internal review of a decision that is or has been the subject of review by the Information Commissioner under the Part except internal review conducted on the recommendation of the Information Commissioner.*
5) *There is to be no internal review of a decision that is or has been the subject of review by the ADT under this Part.*

Reviewing a Decision through the Information Commissioner

Under s90 of the GIPA Act an applicant has 8 weeks from the date they were informed of Council's decision to apply for it to be reviewed by the Information Commissioner. A person can apply to the Information Commissioner to review a decision made by Council in the following circumstances (s89):

1) *A person aggrieved by a reviewable decision of an agency is entitled to have the decision reviewed by the Information Commissioner under this Division.*
2) *When the aggrieved person is the access applicant, the decision is not required to be the subject of internal review by the agency under this Part before it can be reviewed by the Information Commissioner. In any other case the decision is required to be the subject of internal review before it can be reviewed by the Information Commissioner.*
3) *The Information Commissioner may exercise any function of the Information Commissioner under the Government Information (Information Commissioner) Act 2009 for the purposes of or in connection with the review of a reviewable decision of an agency.*
4) *Conduct of an agency that constitutes a reviewable decision of the agency cannot be the subject of a complaint to the Information Commissioner under section 17 of the Government Information (Information Commissioner) Act 2209.*

- For further information please visit http://www.ipc.nsw.gov.au/ or phone 1800 472 679.

Reviewing a Decision through the NSW Civil and Administrative Tribunal (NCAT)

A person who is aggrieved by a reviewable decision of Council may apply directly to the NCAT for a review of the decision. They must make the application to the NCAT within 8 weeks of receiving notice of Council's decision.

Alternatively, if the applicant is not satisfied after the Information Commissioner has reviewed the decision, they can apply to the NCAT to have the decision reviewed again. This application must be made within 4 weeks of the applicant being notified of the completion of the Information Officer's review.

The Information Commissioner may also, with the consent of the applicant for review, refer a decision it is reviewing onto the NCAT for review. In this case the Information Commissioner's review would end.

- For further information please visit http://www.ncat.nsw.gov.au/ or phone 1300 006 228.

Schedule of Documents

No.	Description of record that contains the information	Format of record	Location of record in agency	Released or withheld	Relevant public interest consideration(s) against disclosure
1.	Supplier PO Invoice No 1647	Electronic	TRIM 16.F2678	Released in part.	sec14(4)(b, d)
2.					Previous: 15/4/16 Withheld pending expiry of review rights on 14/6/16.
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

ACRESTA

Acresta Mobile Pty Ltd
ABN: 94 155 382 040

Marrickville Council
Mr. Carlos Loureiro
Manager - Information Services,
PO Box 14
Petersham NSW 2049
Australia

Issued 29 Jan 16
Due 19 Feb 16

Summary My Marrickville App Development

Tax Invoice

Invoice # 1647
PO # 138981

Description	Amount (Inc GST)
MAR 1431 - My Marrickville App Development - [redacted] = $22,500 plus GST	24,750.00
Total Inc GST (AUD)	24,750.00
GST (AUD)	2,250.00
Amount Paid (AUD)	0.00
Balance Due (AUD)	**24,750.00**

Please make payment via EFT transfer to:

[redacted]

Table of Processing Charges

Date	Action	Time spent	Cost
	N/A		
Discount:			
TOTAL:			