

Our ref: GIPA19/3

12 November 2019

Mel

Sent by email only: foi+request-5858-567d2d06@righttoknow.org.au

Dear Mel,

Your access application made to the NSW Crime Commission via the “Right to Know” website – invalid application

I refer to the above access application made by you to the New South Wales Crime Commission (the Commission), via the “Right to Know” website, on 7 November 2019.

Decision on your application

I am authorised under subsection 9(3) of the *Government Information (Public Access) Act 2009 (NSW)* (the GIPA Act) to make a reviewable decision in connection with your access application.

I have decided that your access application is invalid as the formal requirements set out under section 41 of the GIPA Act have not been met, namely:

- the required fee of \$30 did not accompany your application; and
- your name and postal and/or email address have not been provided as the address for correspondence in connection with the application.

Information relating to the Commission’s investigative and reporting functions are categorised as “excluded information” under Schedule 2 of the GIPA Act and any access applications requesting such information are deemed invalid under the GIPA Act. Depending on the circumstances, however, the Commission may be able to release some information to you informally pursuant to section 8 of the GIPA Act. If you would like to discuss this option, please provide me with your full name, your email address, and your phone number, by email to:

governmentinformationofficer@crimecommission.nsw.gov.au.

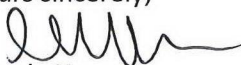
Rights of review

If you do not agree that your application is invalid, you may seek a review of this decision. Your review rights are summarised in the enclosed fact sheet. You have 4 weeks from the date of this letter to apply for internal review, or 8 weeks to apply for an external review.

If you have any queries, please do not hesitate to contact me on (02) 9269 3888 or by email at the email address noted above.

I trust the above is of assistance to you.

Yours sincerely,



Angela Huang

Policy Legal Officer | Governance Unit

Encl – IPC ‘Your review rights under the GIPA Act’ Fact Sheet dated May 2019.

A1557924



Your review rights under the GIPA Act

The right to information system in NSW aims to foster responsible and representative government that is open, fair and effective.

You have the right to request a review of certain decisions¹ made by government agencies about the release of information under the *Government Information (Public Access) Act 2009* (GIPA Act):

- a) a decision that an application is not a valid access application
- b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- d) a decision to provide access or to refuse to provide access to information in response to an access application
- e) a decision that government information is not held by the agency
- f) a decision that information applied for is already available to the applicant
- g) a decision to refuse to confirm or deny that information is held by the agency
- h) a decision to defer the provision of access to information in response to an access application
- i) a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- j) a decision to impose a processing charge or to require an advance deposit,
- k) a decision to refuse a reduction in a processing charge
- l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- m) a decision to include information in a disclosure log despite an objection by the authorised objector

(or a decision that the authorised objector was not entitled to object).

You generally have three review options.

1. Internal review

You have **20 working days**² after the notice of a decision has been given to you, to ask for an internal review by the agency that made the decision. An agency may accept an application for internal review out of time, but is not obliged to do so.³

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review⁴, but you can ask for an external review (see below).

Similarly, if the access applicant or one of any number of third parties has sought an internal review of the decision that you are not satisfied with, you are not entitled to seek an internal review of the decision.⁵ You are however able to seek an external review.

The review must be carried out by an officer who is no less senior than the person who made the original decision.⁶ The review decision must be made as if it was a fresh application.⁷

There is a \$40 fee for an internal review application.⁸ An agency may choose to waive the internal review fee.⁹ No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time¹⁰ or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under section 93 of the GIPA Act.¹¹ In this case, you cannot be charged a review fee.

² Section 83(1) GIPA Act

³ Section 83(2) GIPA Act

⁴ Section 82(2) GIPA Act

⁵ Section 88 GIPA Act

⁶ Section 84(2) GIPA Act

⁷ Section 84(1) GIPA Act

⁸ Section 85(1) GIPA Act

⁹ Section 127 GIPA Act

¹⁰ Section 85(2) GIPA Act

¹¹ Section 93(6) GIPA Act

¹ Section 80 GIPA Act

The agency must acknowledge your internal review application within **five** working days of receiving it.¹² The agency must decide the internal review within **15** working days¹³ (this can be extended by **10** working days if the agency has to consult with a third party not previously consulted¹⁴, or by agreement with you¹⁵).

Note: You cannot ask for internal review of a decision that is being or has already been reviewed by the Information Commissioner¹⁶ or the NSW Civil and Administrative Tribunal (NCAT)¹⁷. This does not apply if the internal review was recommended by the Information Commissioner under section 93.

What is a working day?

A working day is defined as any day that is not a Saturday, Sunday, public holiday or any day during the period declared by the Premier as the Christmas closedown period.¹⁸

What does notice 'given to' mean?

In the decision of *Choi v University of Technology Sydney* [2017] NSWCATAD 198, the NCAT considered when notice of a decision could be considered to have been 'given to' an access applicant, for the purposes of calculating the time period to seek a review.

NCAT gave the following guidance, in the circumstances where the applicant was emailed a notice of decision as an attachment:

- the words 'given to' have their ordinary meaning of 'delivered' or 'handed over' (at [23], citing *Melville v Townsville City Council* [2004] 1 Qd R 530 at [27])
- in the case of notification by email, notice was given when the decision was emailed to an applicant (at [23])
- in the case of notification by post, notice is given at the time when the letter would be delivered in the ordinary course of the post, unless the contrary is proved (at [24]-[25], citing *Melville v Townsville City Council* and *ZAG v NSW Trustee and Guardian* [2016] NSWCATAP 19)
- it was not necessary for the applicant to have read or been aware of the contents of a decision for it to have been 'given to' them (at [23]).

¹² Section 83(3) GIPA Act

¹³ Section 86(1) GIPA Act

¹⁴ Section 86(2) GIPA Act; IPC Fact Sheet [Why consult third parties; Guideline 5 Consultation on the public interest considerations](#)

¹⁵ Section 86(4) GIPA Act

¹⁶ Section 82(4) GIPA Act

¹⁷ Section 82(5) GIPA Act

¹⁸ Clause 1, Schedule 4 to the GIPA Act

2. External review by the Information Commissioner

If you disagree with any of the decisions listed above, you can ask for an external review by the Information Commissioner.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the Information Commissioner to review it.¹⁹

However, if you are not the access applicant, you **must** seek an internal review before applying for review by the Information Commissioner, unless an internal review is not available to you²⁰ (see Option 1 above; internal review is not available if a Minister or their personal staff, or the principal officer of an agency made the decision, if the decision has already been internally reviewed by the agency or if the decision is being or has been reviewed by NCAT).

You have **40 working days**²¹ from being notified of the decision to ask for a review by the Information Commissioner.

There is no provision in the GIPA Act that permits the Information Commissioner to accept applications out of time.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency. This may include a recommendation that the agency reconsider and make a new decision on the access application.²² This enables the agency to make a new decision, whether or not the decision has already been the subject of internal review by the agency.²³

The Information Commissioner has 40 working days from the day on which all necessary information relating to a review application has been received to complete the review of a decision and make any recommendations.²⁴ The Information Commissioner and applicant can agree to an extension of the timeframe. The Information Commissioner will notify the agency of any extension.²⁵

If the Information Commissioner does not complete the review within the 40 working day period, the Information Commissioner is deemed to have made no recommendations to the agency.²⁶ The effect of this is

¹⁹ Section 89(2)(a) GIPA Act

²⁰ Section 89(2)(b) GIPA Act

²¹ Section 90 GIPA Act

²² Section 93(1) GIPA Act

²³ Section 93(2) GIPA Act

²⁴ Section 92A(1) GIPA Act

²⁵ Section 92A(2) GIPA Act

²⁶ Section 92A(3) GIPA Act

that the original decision stands and the only option available to the applicant is to seek a review by NCAT. The applicant must be notified when the review is completed and advised of any recommendations made by the Information Commissioner.²⁷

Note: You cannot ask the Information Commissioner to review a decision that is being or has already been reviewed by NCAT²⁸.

3. External review by the NSW Civil and Administrative Tribunal (NCAT)

If you disagree with any of the decisions listed above, you can ask for a review by NCAT.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the NCAT to review it. However, if you are not the original access applicant (i.e. you are a third party), you must seek an internal review before applying for review by NCAT, unless an internal review is not available to you²⁹ (see Option 1 above; internal review is not available if a Minister or their personal staff, or the principal officer of an agency made the decision, if the decision has already been internally reviewed by the agency or if the decision is being or has been reviewed by the Information Commissioner).

You do not have to have the decision reviewed by the Information Commissioner before applying for review by NCAT.³⁰

You have **40 working days**³¹ from being notified of the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days**³² from being notified of the Information Commission's review outcome to apply to NCAT.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au

²⁷ Section 92A(4) GIPA Act

²⁸ Section 98 GIPA Act

²⁹ Section 100(2) GIPA Act

³⁰ Section 100 GIPA Act

³¹ Section 101(1) GIPA Act

³² Section 101(2) GIPA Act