

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Mr Austin Li
File Ref:	2022/1850
Decision-maker:	Dr Kate Cumming, Manager Archives and Records Management Services
Date of decision:	3 June 2022

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1. Summary of access application

The University of Sydney (**the University**) received your access application under the *Government Information (Public Access) Act 2009* (**the GIPA Act**) received on 9 May 2022. Your application is expressed as follows:

I would be very grateful if you can kindly provide the following data for the 2021/22 admission cycle (i.e. 2021 fall intake):

1. List of all postgraduate taught programmes
2. Numbers of all applications (for each specific programme)
3. Numbers of all offers made (for each specific programme)
4. Numbers of Chinese nationality applications (for each specific programme)
5. Numbers of Chinese nationality offers made (for each specific programme)

The meaning of “2021 fall intake” was clarified with you by email dated 20 May 2022 and has been based on the Australian academic year and the University’s census date¹ meaning the numbers for the full January to December 2021 academic year.

2. 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)(c) that some of the information is already available to you
- under section 58(1)(d) to refuse to provide access to some of the information because there is an overriding public interest against its disclosure.

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).

These decisions are reviewable under section 80 of the GIPA Act. See part 7 of this notice for information on review rights.

¹ See: <https://www.sydney.edu.au/students/census.html>

3. Information already available to you

In part 1 of your application you sought access to:

1. List of all postgraduate taught programmes

This page on the University's website:

<https://www.sydney.edu.au/courses/search.html?search-type=course&course-level=pc&page=1>

enables a search to be made which returns all postgraduate courses available at the University.

4. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application. The relevant information was provided by the University's Institutional Analytics and Planning office which is the University's administrative and management data reporting centre. The information was provided in the form of a spreadsheet titled "2021 PG coursework intake" (**the document**).

5. 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.

5.1. 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.

In my view the following public interest considerations in favour of disclosure apply when considering the documents in issue:

- The general public interest in favour of disclosure of government information
- The public interest in favour of disclosure of information which could inform the public about student marketing and recruitment functions at the University.

5.2. Personal factors of the application

Under section 55 of the GIPA Act I can also take into account any personal factors of your application. I am not aware of any personal factors in your application.

5.3. 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 at Section 14 of the GIPA Act (**the Table**). 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 give the words "could reasonably be expected to" their ordinary meaning, that is reasonable, not irrational, absurd or ridiculous.

Public interest considerations against disclosure in the Table at Section 14 which are relevant to the information responsive to your application include:

1 Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally) —

...

(f) prejudice the effective exercise by an agency of the agency's functions,

...

4 Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects —

...

(d) prejudice any person's legitimate business, commercial, professional or financial interests,

...

The object and functions of the University are set out in section 6 of the *University of Sydney Act 1989*:

6 Object and functions of University

(1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

(2) The University has the following principal functions for the promotion of its object—

- (a) the provision of facilities for education and research of university standard,
- (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
- (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
- (d) the participation in public discourse,
- (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

(3) The University has other functions as follows—

- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (a1) without limiting paragraph (a), the University may generate revenue for the purpose of funding the promotion of its object and the carrying out of its principal functions,
- (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
- (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
- (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.

(4) The functions of the University may be exercised within or outside the State, including outside Australia.

The University has specific functions relating to domestic and international postgraduate students, they include marketing to and recruitment into its courses of study.

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The University is one of the largest providers of educational services domestically and to international students in Australia² and is very competitive in the both the domestic and international tertiary education market. Income from postgraduate students forms a significant part of the University's operating revenue.³

It could reasonably be expected that disclosure of this information in the document which are the subject of your application would:

- prejudice the effective exercise by the University of its functions,
- prejudice the University's legitimate business, commercial or financial interests.

The information in the document responsive to parts 2 to 5 of your application would prejudice the University's position in the highly competitive domestic and international market for postgraduate students. The disclosure of the information contained in the document would provide the University's competitors with a detailed map of where and which programs to target in their marketing and student recruitment. The University does not have similar information in relation to its competitors and I note that such detailed information is not required to be reported publicly and that universities do not make such granular information public. The information in the document has commercial value and in the hands of the University's competitors could reasonably be expected to prejudice the effectiveness of the University's functions of marketing to and recruitment of postgraduate students. This would result in a loss of market share by the University so prejudicing its legitimate business, commercial and financial interests.

In summary, it is to be reasonably expected that disclosure of the information indicated in the schedule as being subject to clause 1 would have the effects listed in Clauses 1(f) and 4(d) of the Table at section 14 of the GIPA Act.

5.4. Consultation

No consultation was required or conducted under section 54 of the GIPA Act.

5.5. Balancing the public interest test

The object of the GIPA Act is to be achieved by authorising and encouraging proactive release of information, providing an enforceable right of access, and restricting access to government information only where there is an overriding public interest against disclosure. In accordance with section 13, there is an overriding public interest against disclosure of information for the purposes of the GIPA Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

I have considered the relevant public interest considerations in favour of and against the disclosure of the information that you have requested. The public interest considerations in favour of disclosure are set out in section 5.1 of this Notice. The public interest considerations against disclosure are set out in section 5.3 of this Notice. I have formed the view that disclosure of the information contained in the

² For example see: https://internationaleducation.gov.au/research/research-snapshots/Documents/RS_International%20students%20at%20universities.pdf

³ See the University of Sydney *Annual Report 2021* pages 46-7 at: <https://www.sydney.edu.au/about-us/vision-and-values/annual-report.html>

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document could reasonably be expected to have one or more of the relevant effects listed in the Table at section 14 of the GIPA Act. Accordingly, it is appropriate to take these public interest considerations into account when assessing whether there is an overriding public interest against disclosure.

As stated in 5.3 above the University's functions include marketing to and recruitment of domestic and international postgraduate students to its courses.

The disclosure of the information in the document is withheld under the relevant public interest considerations against disclosure in clauses 1 and 4 of the Table could reasonably be expected to have the prejudicial effects described in those clauses. While recognising the public interest in the disclosure of government information generally, and specifically regarding student numbers, I give more weight to the public interest in the protection of University functions of the marketing to and recruitment of postgraduate students and the prevention of prejudice to the University's legitimate business, commercial or financial interests. It is a factor in my decision that all Australian universities provide some information regarding their domestic and international students to the Commonwealth Department of Education, Skills and Employment. Some of this information is made public in a way that does not prejudice any university.⁴

6. Disclosure log

If information that would be of interest to other members of the public is disclosed 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). As no information is being disclosed no details of your application will be included in our disclosure log.

7. 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 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 the NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), *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.

⁴ For example, see: <https://www.dese.gov.au/higher-education-statistics> and <https://www.dese.gov.au/international-education/data-and-research#toc--international-data->

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

8. Further information

If you have any questions about this notice or would like any further information, please contact Dr Cumming, gipa.enquiries@sydney.edu.au or on +612 9351 4263.

A handwritten signature in black ink, appearing to be 'K. Cumming', written on a light grey background.

Dr Kate Cumming
Manager, Archives and Records Management Services

9. Schedule of documents
(including relevant public interest consideration(s) against disclosure for documents not released or released in part)

Part of application documents are responsive to	Page numbers of pdf	Release	Relevant public interest consideration(s) against disclosure
Spreadsheet titled "2021 PG coursework intake"	6	No	1(f), 4(d)