

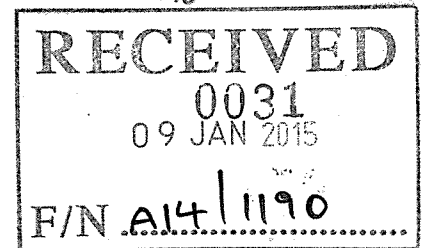


# Premier & Cabinet

Our ref: A1073730

Ms Anne Gardiner  
General Secretary  
Public Service Association  
GPO Box 3365  
SYDNEY NSW 2001

05 JAN 2015



Dear Ms Gardiner

## Application for access to government information

I refer to your application made under the *Government Information (Public Access) Act 2009* (the GIPA Act) to the Department of Premier and Cabinet dated 15 August 2014, received by the Department on 10 September 2014 and amended on 6 November 2014 requesting access to:

*"From September 2013 to September 2014:*

*All agenda and minutes for the NSW National Disability Insurance Scheme Transition steering committee monthly meetings and out of session meetings*

*All agenda and minutes for the NSW National Disability Insurance Scheme Transition Board quarterly meetings and out of session meetings."*

Your application is a valid application under the GIPA Act and was originally due to be decided, following consultation with third parties, by the revised date of 19 December 2014.

## Decision about access

I have today decided your application by deciding to:

- Provide access in full to the records described in Table A under section 58(1)(a) of the GIPA Act, and
- Provide access in part to the records described in Table B under section 58(1)(a) of the GIPA Act, subject to the redaction of material, under section 74.

Copies of these records are enclosed.

## Statement of reasons

There is a presumption in favour of disclosing government information. You have a legally enforceable right to be provided with access to the information sought, unless there is an overriding public interest against disclosure of the information.

In determining whether there is an overriding public interest against disclosure, the Department must apply the public interest test under section 13 of the GIPA Act, which provides that there will only be an overriding public interest against disclosure where public interest considerations in favour of disclosure are, on balance, outweighed by those against disclosure.

I consider that the public interest considerations in favour of disclosure are that the release of the requested information could reasonably be expected to:

- promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate of issues of public importance (section 12(2)(a)); and
- inform the public about the operations of agencies (section 12(2)(b)).

#### Documents described in Table A – released in full

I am satisfied that there is not an overriding public interest against disclosure of the information contained in the documents described in Table A. These are documents 2, 3, 5, 11, 15 and 30.

#### Documents described in Table B (released in part)

##### **Documents 1, 6 to 10, 12, 13, 17 to 27 and 29**

Clause 2 of Schedule 1 of the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to as “Cabinet information”) contained in any of the following documents:

- a document prepared after Cabinet’s deliberation or decision on a matter that would reveal or tends to reveal information concerning any of those deliberations or decisions (Clause 2(1)(d)) (*Documents 1, 6 to 10, 12, 13, 17 to 21, 23 to 27 and 29*).
- a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in paragraphs (a)–(e) (clause 2(1)(f)). (*Document 22*).

Parts of the above documents fall within the conclusive presumption against disclosure contained in clause 2(1)(d) and (f) of Schedule 1 of the GIPA Act.

Additionally, I have also determined that the redacted portions of these documents do not contain solely factual material (as provided for in clause 2(4) of Schedule 1 of the GIPA Act).

##### **Documents 1, 4, 9, 14, 22 and 24**

Section 14(2) of the GIPA Act provides that the matters set out in the Table to Section 14 are public interest considerations against disclosure that may be taken into account in deciding an application.

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to:

- reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency (Item 1(e) of the table to section 14). (*Documents 1, 9, 14, 21, 22, 24*).
- prejudice the effective exercise by an agency of the agency’s functions (Item 1(f) of the table to section 14). (*Documents 14 and 24*).
- prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results

(whether or not commercial and whether or not completed) (Item 1(h) of the table to section 14). (*Document 24*).

- prejudice any person's legitimate business, commercial, professional or financial interests Item 4(d) of the table to section 14) (*Documents 1, 4, 22 and 24*).
- prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commercial and whether or not completed) Item 4(e) of the table to section 14). (*Documents 14 and 24*).

I consider that the information contained in parts of documents 1, 4, 9, 22 and 24 contain opinion, advice and recommendations covered by Section 14, clause 1(e)(f) and (h) and clause 4(d) and (e).

### **Document 28 - Personal information**

Document 28 contains information that may reveal an individual's personal information under Table 4, clause 3(a) of the GIPA Act.

### **Conclusion**

Accordingly, I consider that Documents at Table B contain sections that are subject to a conclusive presumption that there is an overriding public interest against their disclosure.

In reaching this conclusion, I have also considered that the material that is in the redacted portion of the relevant documents above does not consist solely of factual material for the purposes of clause 2(4) of Schedule 1.

I have considered the public interest considerations both in favour and against disclosure of the information contained in the attached redacted minutes and agendas of the National Disability Insurance Scheme Transition Steering Committee and the National Disability Insurance Scheme Transition Board, as set out in Table B, and I consider that, on balance, the public interest considerations against disclosure of the redacted information in this case outweigh the public interest considerations in favour of its disclosure.

In reaching this view, I have consulted with third parties as required under the GIPA Act and taken into account objections received from third parties.

### **Disclosure log**

The Department is required to keep a disclosure log which records details of access applications that the Department has decided by providing access to the information requested where the Department considers the information to be of interest to other members of the public. I note that you did not object in your application to the inclusion of information relating to your application on the disclosure log.

I have decided that the information that is to be released to you will also be disclosed on the Department's disclosure log at:

[http://www.dpc.nsw.gov.au/prem/accessing\\_dpc\\_information/dpc\\_disclosure\\_log](http://www.dpc.nsw.gov.au/prem/accessing_dpc_information/dpc_disclosure_log)

### **Fees and charges**

The GIPA Act entitles the Department to charge for the processing of an application. I have decided that no further charges should be imposed for this application.

### **Rights of review**

This decision is a reviewable decision under section 80 of the GIPA Act. If you are aggrieved by my decision, you may seek review under Part 5 of the GIPA Act.

There are three forms of review:

- internal review by a senior officer of the Department,
- external review by the Information Commissioner, or

- external review by the Administrative Decisions Tribunal.

Your review rights are summarised in the enclosed fact sheet. You have four weeks from the date of this letter to apply for an internal review, and eight weeks to apply for an external review.

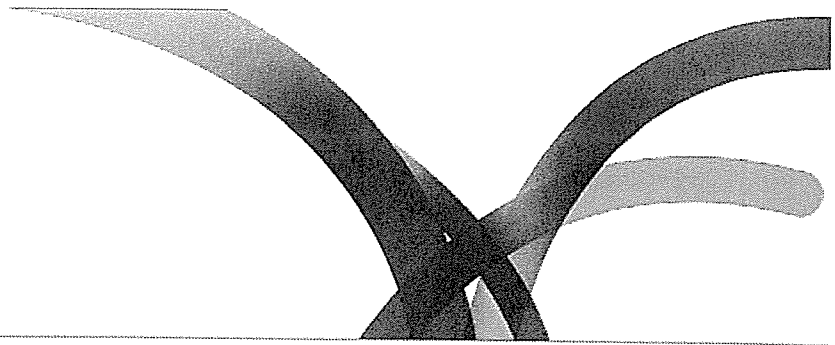
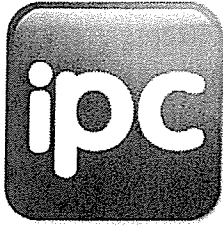
**Inquiries**

Please contact Sandra Scacciotti, Senior Project Officer, Information Access Unit, on telephone (02) 9228 3168 if you have any questions in relation to your application.

Yours sincerely

A handwritten signature in black ink that reads "Karen Smith". The signature is written in a cursive, flowing style.

Karen Smith  
**Deputy General Counsel**



## Your review rights under the GIPA Act

## Fact sheet

Aug 2014

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 decisions 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.**

### Internal review

You have 20 working days after the notice of a decision has been posted to you to ask for an internal review by the agency that made the decision.

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

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

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

The agency must acknowledge your application within five working days of receiving it. The agency must decide the internal review within 15 working days (this can be extended by 10 working days if the agency has to consult with a third party, or by agreement with you).

### External review by the Information Commissioner

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

If you are not the access applicant, you must seek an internal review before applying for review by the Information Commissioner. However, if an internal review cannot be sought (if a Minister or their personal staff, or the principal officer of an agency made the decision), you can seek a review by the Information Commissioner.

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

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

Note: You cannot ask the Information Commissioner to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal (NCAT).

## **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. You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by NCAT.

You have 40 working days 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 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](mailto:ipcinfo@ipc.nsw.gov.au)  
Website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)