



information  
and privacy  
commission  
new south wales

## Review report under the *Government Information (Public Access) Act 2009*

Applicant: Rationalist Association of NSW  
Agency: Legal Aid NSW  
Report date: 10 April 2015  
IPC reference: IPC15/R000160  
Keywords: Government information – publicly available information –  
searches for information

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## Summary

1. Mr Max Wallace, Vice-President of the Rationalist Association of NSW (the Applicant) applied for information from Legal Aid NSW (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency decided that the information is already available to the Applicant and referred the Applicant to information on its website at [www.legalaid.nsw.gov.au/policyonline](http://www.legalaid.nsw.gov.au/policyonline).
3. The Information Commissioner recommends under section 93 of the GIPA Act that the Agency make a new decision by way of internal review.
4. In making a new decision, the Information Commissioner recommends that the Agency have regard to the matters raised and guidance given in this report, and that the Agency's searches include information stored in its files related to assistance provide by the Agency to two individuals.

## Background

5. The Applicant applied under the GIPA Act to the Agency for access to the information referred to in a media article, about the decision to grant legal aid to two individuals. For privacy reasons the identities of the two individuals have not been disclosed in the published version of this report.
6. In its decision issued on 18 February 2015, the Agency stated:

*The relevant searches that were within the scope of your request for information was a search of the Legal Aid NSW website at [www.legalaid.nsw.gov.au/policyonline](http://www.legalaid.nsw.gov.au/policyonline).*
7. The Agency advised the Applicant in its decision that

*Decisions about whether to provide legal assistance to an applicant for legal aid are based upon Legal Aid NSW's eligibility policies. When an application is received, the determining officer will consider whether the matter is one of the types of matters for which legal aid is available (the Jurisdiction Test), whether the applicant meets the Legal Aid NSW Means and Merit Tests and whether funds are available (the Availability of Funds Test).*
8. The Agency provided brief information about each of these tests and referred the Applicant to the complete Legal Aid eligibility policies that are available online.
9. In seeking a review of the decision by the Information Commissioner, the Applicant stated that the Agency did not provide the information requested, and alleged that

*NSW Legal Aid applied a technical, legal reading to our request for information rather than the information obviously required by us.*
10. In relation to the outcome sought from the review, the Applicant stated that it wants the Agency to:

*Release the information we requested, specifically documented reasons for legal aid funding for [the two individuals] to take their matter all the way to the High Court.*

## Decision under review

11. The decision under review is the Agency's decision that the requested information is already available to the Applicant. This is a reviewable decision under section 80(f) of the GIPA Act.
12. Pursuant to section 97 of the GIPA Act, in this review the burden of establishing that the decision is justified lies on the Agency.
13. In conducting this review we have considered the terms of the Applicant's access application and the Agency's reasons for deciding that the information is already available, as set out in its notice of decision.

## Was the Agency's decision justified?

14. The Agency's notice of decision indicates that the Agency conducted searches of its website at [www.legalaid.nsw.gov.au/policyonline](http://www.legalaid.nsw.gov.au/policyonline) and that it considered information found on its website to be relevant to the access application. The Agency decided that this information is publicly available. We are satisfied that this aspect of the Agency's decision is justified.
15. However, we are not satisfied that the Agency's searches were sufficient to meet the requirement in section 53 of the GIPA Act. In particular, Section 53(2) and 53(3) provides:

*An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency's searches must be conducted using the most efficient means reasonably available to the agency.*

*The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.*
16. The expression 'government information' is defined in section 4 of the GIPA Act as 'information contained in a record held by an agency.'
17. In *Smith v Commissioner of Police [2012] NSWADT 85*, Judicial Member Isenberg said at paragraph 27:

*In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:*

*(a) are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so,*

*(b) have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case.*
18. The information sought by the Applicant is information that is specific to why the Agency decided to grant legal aid to the two individuals (the clients). In addition to the publicly available policy documents identified by the Agency, it is our view that there are reasonable grounds to believe that additional information exists and is held by the Agency. This includes but is not limited to information applying the publicly available policies to the clients and any other documented reasons for providing legal aid to the clients. A reasonable search would, in our view, include a search of the Agency's files relating to legal aid provided to the clients.

19. The GIPA Act does not require an agency to include details of its searches in a notice of decision. However, it is good practice for written decisions to clearly explain what the search processes were, what was found, an explanation if no records were found, what was released and what was held back. Details of searches should include where and how the agency searched, a list of any records found – and if appropriate a reference to the business centre holding the records, the key words used to search digital records (including alternative spellings used) and a description of the paper records that were searched. If the Agency adopts our recommendation and makes a new decision, its notice of decision would benefit from including details of its searches.

## Recommendations

20. The Information Commissioner recommends under section 93 of the GIPA Act that the Agency make a new decision by way of internal review.
21. In making a new decision, the Information Commissioner recommends that the Agency have regard to the matters raised and guidance given in this report, and that the Agency's searches include information stored in its files related to assistance provided by the Agency to the two individuals.
22. We ask that the Agency advise the Applicant and us by **17 April 2015** of the actions to be taken in response to our recommendations.

## Review rights

23. Our reviews are not binding and are not reviewable under the GIPA Act. However a person who is dissatisfied with a reviewable decision of an agency may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of that decision.
24. The Applicant has the right to ask the NCAT to review the Agency's decision.
25. An application for a review by the NCAT can be made up to 20 working days from the date of this report. After this date, the NCAT can only review the decision if it agrees to extend this deadline. The NCAT's contact details are:

NSW Civil and Administrative Tribunal  
Administrative and Equal Opportunity Division  
Level 10, John Maddison Tower  
86-90 Goulburn Street,  
Sydney NSW 2000  
Phone: 1300 006 228  
Website: <http://www.ncat.nsw.gov.au>
26. If the Agency makes a new reviewable decision as a result of our review, the Applicant will have new review rights attached to that new decision, and 40 working days from the date of the new decision to request an external review at the IPC or NCAT.

## Completion of this review

27. This review is now complete.
28. If you have any questions about this report please contact the Information and Privacy Commission on 1800 472 679.



Elizabeth Tydd  
**Information Commissioner**