



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

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<b>Applicant:</b>	<b>Adam Bonner</b>
<b>Agency:</b>	<b>Shoalhaven Council</b>
<b>OIC reference:</b>	<b>11-095</b>
<b>Date review request received:</b>	<b>12 April 2011</b>
<b>Date of final report:</b>	<b>14 October 2011</b>

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**A Summary of report**

1. On 13 March 2011, the applicant sought copies of images/footage of himself and/or his vehicle recorded by Shoalhaven Council on closed circuit television camera in Nowra's CBD, on 7 specific dates, at specific times, as set out in his formal application for access to information.
2. On 7 April 2011, Shoalhaven Council provided a notice and reasons of decision to the applicant, stating:

Although I have determined to give you access to the information you have requested (except for Items 5 and 6, where your image was not clearly identifiable), if the information contained the images of other people I was not able to release the recorded footage as Council does not have the software available to pixelate this personal information. Council would need to incur unreasonable additional costs to engage an external party to pixelate the information. In those circumstances I have released the images to you by way of a snapshot with the personal information of others deleted.
3. On 12 April 2011 we received the applicant's request for external review of the Shoalhaven Council's decision to provide access to still shots taken from CCTV footage, rather than access to or copies of the footage itself.
4. The applicant has a related application before the Administrative Decisions Tribunal pursuant to the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act).

## **B What has the Information Commissioner reviewed**

5. We have reviewed the decision made by Council dated 7 April 2011.
6. In conducting this review, we have:
  - a. read the decision made by the Council and the documents provided by Mr Bonner
  - b. reviewed the file (including un-redacted footage) provided by the Council
  - c. spoken with Mr Bonner and the Council

## **C Reviewable decision dealt with in this review**

7. The decision we have reviewed pursuant to s 80(i) of the GIPA Act is the Council's decision to provide Mr Bonner with the information in a "hard copy snapshot" format rather than with video footage as requested.
8. The Council determined to give Mr Bonner access to the information requested (except for items 5 and 6 where his image was not clearly identifiable). However, it has identified that the video footage contains images of other people and therefore contains "personal information" of those people. Section 54 of the GIPA Act requires an agency to consult with a person before providing access to information, if it appears that the information includes personal information about that third person. It is reasonable to assert that in a smaller community like Nowra, the people who appear in the video footage could be identified if released. In identifying any of the individuals, identification may be through recognition alone, without knowing the names or contact details of the individuals. To use a fictitious example, it is possible for a person to see video footage and know the man who drives the red car works at the newsagent. The person's name and contact details are not known, but the individual is recognisable. In this case Council has not been able to consult with any third person as they were not able to identify any person to the point of being able to consult with them. That is not to say that it is not possible for the applicant or another person to identify an individual.

Section 14 table 3(a) provides that there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to reveal an individual's personal information.

### **Reveal an individual's personal information**

9. The consideration at section 14 table 3(a) will apply where information could reasonably be expected to reveal an individual's personal information (being another individual other than the applicant).

Schedule 4 clause 4 of the GIPA Act provides:

*In this Act, **personal information** means information or an opinion...about an individual...whose identity is apparent or can reasonably be ascertained from the information or opinion....*

Schedule 4 clause 1 provides the following definition:

***Reveal** information means to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure).*

10. I am satisfied with the agency's consideration of section 14 table 3(a), that disclosure of the information could reasonably be expected to reveal an individual's personal information, and that on balance, this consideration outweighs the considerations in favour of disclosure of their personal information.

#### **Forms of access**

11. Section 72(2)(d) of the GIPA Act provides that an agency must provide access in the way requested by the applicant unless there is an overriding public interest against disclosure of the information in the way requested by the applicant. Having regard to the personal information of others, Council has decided to give access in the form of a still image of Mr Bonner and/or his vehicle (but not the footage with other people's personal information in it). It has struck a balance between providing the personal information relating to Mr Bonner that he requested, while protecting the personal information of the third parties.

#### **Additional information released by Council**

12. Mr Bonner advised that when the footage and images were emailed to him, an additional still image was included even though the decision said that they could not identify him in the footage at that time. This image was taken at Junction Court and appears to be an image of Mr Bonner, although it is blurry.
13. Mr Bonner also asserts that Council deliberately provided a blurry image, as there may have been a clearer image of him than the blurry image supplied. Mr Bonner's view is that when he moved forward into the shadow there would be a clearer image that Council should have given to him. I am of the view that this image was initially produced in good faith from the footage available but when Council reviewed the footage to make its decision, it was concerned that the footage was

too blurry for them to be completely certain that the person in the footage is Mr Bonner. I am also satisfied that the image was sent to Mr Bonner by mistake and not in bad faith. The lack of clarity reflects the difficulties experienced with CCTV footage in areas that are subject to changes in lighting conditions.

## **D Our view**

13. We uphold Shoalhaven Council's decision to provide information in an alternative format to that requested.
14. A review by the Information Commissioner is not binding and is not reviewable under the GIPA Act. However a person who is dissatisfied with a reviewable decision of an agency may apply to the Administrative Decisions Tribunal (ADT) for a review of that decision.
15. If Mr Bonner is dissatisfied with our review, he may ask the ADT to review the original decision of the agency. For further information in relation to ADT reviews, please contact the ADT on (02) 9223 4677.
16. An application for ADT review can be made within 4 weeks of the date of this report, that is by 10 November 2011.

## **E Closing our file**

17. This review is now closed. If you have any questions regarding the review please contact 1800 472 679.