



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

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<b>Applicant:</b>	<b>Ms Gemma Lawrence</b>
<b>Agency:</b>	<b>Fire and Rescue New South Wales</b>
<b>OIC reference:</b>	<b>11-431</b>
<b>Date review request received:</b>	<b>23 December 2011</b>
<b>Date of this report:</b>	<b>28 September 2012</b>

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**Summary of this report**

1. On 21 October 2011 Ms Lawrence applied to Fire and Rescue New South Wales (**FRNSW**) for access to information under the *Government Information (Public Access) Act 2009 (GIPA Act)*.
2. On 23 December 2011, having not received a decision on her application, Ms Lawrence asked that we review the deemed refusal of her application by FRNSW.
3. In a notice of decision dated 7 March 2012 FRNSW made a late decision for Ms Lawrence.
4. Ms Lawrence asked that we review the late decision of FRNSW.
5. We find that FRNSW's notice of decision did not comply with the requirements of section 61 of the GIPA Act for notices of decision refusing access to information.
6. We recommend under section 93 of the GIPA Act that FRNSW make a new decision by way of internal review within **15 working days** of this review report (subject to any permissible extensions under the GIPA Act). Further details about this recommendation are set out in paragraph 94 of this report.
7. We ask that FRNSW advise us and Ms Lawrence by **5 October 2012** of the actions FRNSW intend to take in response to our recommendations.

**Background**

8. On 21 October 2011 Ms Lawrence applied to FRNSW for access to:

1. The first consultant's cost benefit analysis of NSWFB Services commissioned in 2010/11
  2. The second consultant's report regarding alternative funding commissioned in 2010/11
  3. The second consultant's report regarding targeted interventions project
  4. State Property Authority report into development of an emergency services academy
9. The application is for four documents. In the notice of decision FRNSW referred to each of the documents in the application as documents 1-4. We will use the same references when discussing specific documents.
10. In a notice of decision dated 7 March 2012 FRNSW made a late decision under section 63(2) of the GIPA Act. FRNSW decided to:
- a. release Document 1
  - b. release some of the information in Document 3
  - c. withhold Document 2 and Document 4.
11. The decision to withhold information was made because FRNSW decided there is an overriding public interest against disclosure of that information.

## **Our review**

12. Ms Lawrence asked that we review the late decision of FRNSW to withhold the information that she applied to access. These are reviewable decisions under section 80(d) of the GIPA Act. We will not consider Document 1 because it was released.
13. In conducting our review we have:
- a. spoken to both parties to this review
  - b. considered the notice of decision
  - c. inspected the withheld information
  - d. considered the relevant provisions of the GIPA Act.
14. This report addresses:
- a. requirements for notices of decision refusing access (section 61 of the GIPA Act); and
  - b. the public interest test as applied to the information at issue.

## **Requirements for notices of decision**

15. Under section 61 of the GIPA Act when an agency refuses to provide access to information because there is an overriding public interest consideration against disclosure, it must provide a notice of decision that includes:
- a. the reasons for its decision to refuse access;
  - b. the findings on any key questions of fact, and the source of the information on which the findings are based; and
  - c. the general nature and format of the records that contain the information sought.

16. We find that FRNSW has not complied with section 61 of the GIPA Act because FRNSW did not provide adequate reasons for its decision in relation to the public interest considerations against disclosure upon which it relied. Specifically the notice of decision did not adequately describe how releasing the information would cause the particular prejudice identified by FRNSW, and what the consequence would be for FRNSW.
17. Considerable time has passed since FRNSW made its decision. We have, since that decision, provided FRNSW with guidance on the requirements that must be met when writing notices of decision that refuse access to information.
18. In making a new decision in this matter, we recommend that FRNSW:
  - a. explain its findings on any key questions of fact; and
  - b. list the sources of information on which it has relied; and
  - c. if relevant, pay particular attention to describing how releasing the information would cause the particular prejudice identified.

### **The public interest test**

19. Under the GIPA Act Ms Lawrence has a legally enforceable right to access the information applied for unless there is an overriding public interest against disclosing the information (section 9(1) of the GIPA Act).
20. Before deciding whether to release or withhold information, FRNSW must apply the public interest test and decide whether or not an overriding public interest against disclosure applies to the information.
21. Section 13 of the GIPA Act sets out the public interest test as follows:

*There is an overriding public interest against disclosure of government information for the purposes of this 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.*
22. In deciding whether to release information, FRNSW must apply the public interest test and decide whether or not an overriding public interest consideration against disclosure applies to the information. This is the case only if the public interest considerations against disclosure outweigh those in favour of disclosure. It is not merely a case of establishing that there are public interest considerations against disclosure of the information.
23. FRNSW must apply the public interest test in accordance with the principles set out in section 15 of the GIPA Act:
  - a. agencies must exercise their functions so as to promote the object of the GIPA Act;
  - b. agencies must have regard to guidelines issued by us;
  - c. it is irrelevant if the disclosure of information might cause embarrassment to, or loss of confidence in, the agency;
  - d. it is irrelevant that information disclosed might be misinterpreted or misunderstood; and

- e. disclosure, in response to formal access applications, cannot be made subject to any conditions on the use of the information.

## **Public interest considerations in favour of disclosure**

24. Section 12(1) of the GIPA Act sets out a general public interest in favour of disclosing government information. This consideration must always be weighed in the application of the public interest test and provides that the balance of the public interest test is always weighted in favour of disclosure of the information<sup>1</sup>. The nature and scope of other public interest considerations favour of disclosure that may be relevant in the application of the public interest test are not limited by section 12 of the GIPA Act.
25. Section 5 of the GIPA Act establishes a presumption in favour of disclosure of government information. Section 97 of the GIPA Act places the burden of justifying any decision against disclosing information on FRNSW.
26. The notice of decision did not identify any public interest considerations in favour of disclosure besides the presumption in favour of disclosure in section 5 of the GIPA Act.
27. The notes to section 12(2) of the GIPA Act set out some examples of public interest considerations in favour of disclosure. We consider the following are relevant:
  - a. disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance
  - b. disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

## **Public interest considerations against disclosure**

28. The only public interest considerations against disclosure that may be considered in the application of the public interest test are those set out in schedule 1 and the table to section 14 of the GIPA Act. FRNSW has not raised any of the conclusive public interest considerations against disclosure contained in schedule 1 to the GIPA Act.
29. To raise the public interest considerations against disclosure in the table to section 14 of the GIPA Act as relevant considerations in the application of the public interest test FRNSW must establish that the disclosure of the information "...could reasonably be expected to have ....the effect" outlined in the table.
30. The phrase "could reasonably be expected to" means more than a mere possibility, risk or a chance and must be based on real and substantial grounds and must not be purely speculative, fanciful, imaginary or contrived.
31. In its notice of decision FRNSW raised three public interest considerations against disclosure of the information Ms Lawrence asked for, deciding that releasing the information could reasonably be expected to have the effects, whether in a particular case or generally, outlined in the following clauses of the table to section 14 of the GIPA Act:

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<sup>1</sup> *Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services* [2012] NSWADT 195.

- a. clause 1(e) – 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.
- b. clause 1(f) – prejudice the effective exercise by an agency of the agency’s functions
- c. clause 1(h) – 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 commenced and whether or not completed)

32. FRNSW must therefore:

- a. identify the information;
- b. characterise it as information to which a public interest consideration against disclosure set out in the table to section 14 of the GIPA Act applies; and
- c. show that disclosure of the information could have the effect deemed not to be in the public interest.

## Document 2

33. Our view is that section 15(d) of the GIPA Act is relevant to the decision made by FRNSW on Document 2.

### Consideration of irrelevant factors when applying the public interest test

34. Section 15(d) of the GIPA Act provides that when applying the public interest test it is irrelevant that the information to be disclosed might be misinterpreted or misunderstood.

35. In the section of the notice of decision dealing with Document 2 FRNSW states:

I consider that disclosing document 2 would prejudice the conduct, effectiveness and integrity of the emergency services levy review. Document 2 contains information that is based on preliminary research. Releasing this information into the public domain would give rise to it being misinterpreted, which is likely to compromise the effectiveness of the overall levy review.

36. Also the following paragraph is relevant:

Further, disclosing this information prematurely could create inaccurate expectations concerning the form that the model for funding emergency services would take, which would impair the proper conduct of the review. This is particularly the case given that the review is currently at the initial planning, research and analysis stages. While there will be a period of extensive public consultation, that stage has not yet been reached.

37. Our view is that creating inaccurate expectations is not different to misunderstanding or misinterpreting the information. This is our view because the expectations will be generated after viewing the information, and are said to be “inaccurate”.

38. Both paragraphs from the notice of decision identify that the decision maker has considered the misinterpretation of the information if it was released as the reason in

support of the public interest considerations against disclosure of the information in Document 2.

39. The only reasons in support of any of the public interest considerations against disclosure that FRNSW has identified rely on facts that are irrelevant in the application of the public interest test.
40. We note that section 76 of the GIPA Act authorises agencies to release information other than the information applied for. When there are concerns about misinterpreting information that is to be released, agencies can release additional contextual information to reduce the possibility that the information may be misunderstood or misinterpreted.
41. We recommend that FRNSW make a new decision for Ms Lawrence on Document 2 that only takes into account relevant considerations when applying the public interest test.

### **Document 3**

42. The decision on Document 3 indicates that FRNSW has taken into account the personal factors of the application when making their decision.

### **Personal factors of application – Document 3**

43. The notice of decision records the following in relation to Document 3:

I understand you have a particular interest in these documents for the purpose of carrying out research into Fire & Rescue's death and disability scheme and workers compensation arrangements generally. I also note that the Fire Brigades Employees Union, through its representation on the Board of Trustees for the NSW Fire Death and Disability Super Fund, is privy to certain financial reports concerning the death and disability scheme.

However, I understand that you are not privy, and in my view should not be privy at this time to the profiling and analysis contained in the report...

44. In our view the personal factors considered by FRNSW were:
  - a. Ms Lawrence's identity and connection to the Fire Brigades Employees Union (**FBEU**)
  - b. The representation of the FBEU on a board of trustees (specifically information the FBEU is, or is not, privy to in this capacity)
  - c. Ms Lawrence's motives for making the access application.

### **Personal factors taken into account when deciding against providing access**

45. While the personal factors of the application may generally be taken into account when deciding if there are public interest considerations against disclosure, section 55(3) of the GIPA Act provides:

The personal factors of the application can be taken into account as factors against providing access if (and only to the extent that) those factors are relevant to the agency's consideration of whether the disclosure of the information concerned

could reasonably be expected to have any of the effects referred to in clauses 2–5 (but not clause 1, 6 or 7) of the Table to section 14.

46. FRNSW decided that disclosing the information in Document 3 could reasonably be expected to have the effects referred to in clause 1 of the table to section 14 of the GIPA Act. Therefore the personal factors of the application may not be taken into account as factors against providing access to the information.
47. Ms Lawrence's relationship with the FBEU, and the representation of that organisation on a board of trustees, were taken into account when deciding to refuse access to Document 3.
48. We do not consider that it is a relevant consideration when deciding Ms Lawrence's application what information the FBEU (as a trustee) may not have access to. Any decision made by FRNSW must be made applying the provisions of the GIPA Act. A decision that trustees should not have access to information does not mean that FRNSW is entitled to deny access to the same information in response to an access application under the GIPA Act. Reasons for the decision to decline access must be given that are valid under the GIPA Act. We note that section 15(e) of the GIPA Act may be relevant.
49. We would recommend that in any future notices of decision FRNSW specifically state if the personal factors of the application that are mentioned are being considered as factors for, or against, access to the information. Care should be taken to consider the personal factors of the application only where they are relevant.

#### **Personal factors taken into account when deciding in favour of disclosure**

50. The personal factors of the application may be taken into account as factors in favour of providing access to information.
51. The notice of decision, when referring to Ms Lawrence's interest in researching FRNSW's death and disability scheme as well as worker's compensation generally, indicates that some of the personal factors of the application may have been taken into account as factors in favour of disclosure.
52. We understand that Ms Lawrence sought the information to improve her understanding of FRNSW's death and disability scheme and worker's compensation arrangements. Specifically she wanted to know about how changes to this regime will affect the scheme in the future and what the basis for those changes are. She also wishes to know about plans for training staff, and how FRNSW is to be funded on an ongoing basis. These motivations behind the application relate to all of the information applied for.
53. In our view, the issues raised by Ms Lawrence's motivation for seeking the information, some of which also support the broader public interests in favour of disclosure, are relevant considerations in favour of disclosure because they relate to the motivation for seeking all the information, not just Document 3.
54. We recommend that if FRNSW reconsider this matter, FRNSW take into account the personal factors of Ms Lawrence's application in favour of disclosure when applying the public interest test. FRNSW should give Ms Lawrence an opportunity to make submissions on the personal factors of her application prior to making a new decision.
55. We will now consider the public interest considerations against disclosure that FRNSW identified for Document 3. FRNSW asserts that some of the information in Document 3

is subject to public interest considerations against disclosure because the information does not directly relate to reforms that have been implemented.

**Clause 1(e) - Reveal a deliberation or consultation conducted, or an opinion or recommendation given, in such a way as to prejudice a deliberative process of government or an agency – Document 3**

56. In order for clause 1(e) to apply to the information in Document 3, FRNSW must establish that releasing the information in the documents could reasonably be expected to 'reveal':

- a. a deliberation or consultation conducted; or
- b. an opinion or recommendation

in such a way as to prejudice a deliberative process of FRNSW.

57. The term 'reveal' is defined in schedule 4, clause 1 of the GIPA Act to mean:

to disclose information that has not already been publicly disclosed (otherwise than by lawful means).

58. In *Richards v Commissioner, Department of Corrective Services* [2011] NSWADT 98 Judicial Member Molony at [40] identified an important distinction between the previous Freedom of Information (**FOI**) regime and the GIPA Act. The definitions of 'government information', 'personal information' and 'reveal' operate on information alone not on documents as they did under FOI. Therefore the issue is "not whether the document has been publicly disclosed, but whether the information they contain has been publicly disclosed".

59. FRNSW asserts that the information in Document 3 not released to Ms Lawrence is subject to this public interest consideration against disclosure. In the notice of decision FRNSW stated that:

Reviewing and assessing its fiduciary responsibilities is one of Fire & Rescue NSW's key deliberative processes, as is assessing the financial impact of worker's compensation claims. Another of Fire & Rescue NSW's functions is to manage, support and safeguard the welfare of its firefighting and administrative staff. Profiling and gathering other financial data concerning workers compensation claims and premiums is integral to Fire & Rescue NSW properly discharging both of these functions.

I consider that disclosing this information would impair Fire & Rescue NSW's ability to independently, and free of influence consider the financial impact of the death and disability scheme and other ... workers compensation schemes that apply to its staff.

60. FRNSW asserts that disclosure of the following information:

- a. detailed analysis of FRNSW's claims profiling
- b. analysis of Treasury Managed Fund (**TMF**) claims profiling generally
- c. other detailed information and analysis of the ongoing costs of worker's compensation streams



would impair FRNSW's ability to independently, and free of influence consider the financial impact of the death and disability scheme and other workers compensation schemes that apply to its staff.

61. FRNSW has identified two deliberative processes that relate to this public interest consideration:
  - a. the ability of FRNSW to review and assess its fiduciary responsibilities, and
  - b. assessing the financial impact of workers compensation claims.
62. We agree that these are deliberative processes of FRNSW. Deliberative processes are the thinking processes of an agency.
63. The specific prejudice identified is that releasing the information would mean that FRNSW would not be able to deliberate about these matters "independently and free of influence".
64. It is unclear if the ability to "independently and free of influence" review and assess FRNSW's fiduciary responsibilities and the financial impact of workers compensations claims is a relevant consideration on its own. It is the effect releasing the information would specifically cause to the deliberative processes that might be protected by the public interest consideration against disclosure.
65. The notice of decision does not identify how releasing the information would cause FRNSW to lose its independence when assessing the information in the document, or the influence that FRNSW would be subjected to if the information were disclosed. Identifying the influence FRNSW would be subject to and what prejudice that would cause to FRNSW is crucial because not all influences on agencies making decisions amount to a prejudice. Without this aspect of the decision being included in the notice of decision, we are not persuaded that this public interest consideration against disclosure applies to the information withheld from Document 3.
66. The object of the GIPA Act is to "...maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective...". Withholding information until after reforms are implemented may not always accord with these objects, particularly over periods of time that last some years (this report is from 2010).
67. FRNSW has not described how the release of the information would affect the deliberative processes identified. No differentiation between the information withheld and the information released has been described other than the fact that the information released relates to reforms that have been implemented. It is not stated what the influence would be that would prejudice the deliberative processes of FRNSW, nor is it explained how releasing the information would affect FRNSW's independence in relation to implementing the remaining reforms (or not).
68. FRNSW has therefore not established in its notice of decision that clause 1(e) is a relevant consideration against disclosure of the information in issue.

### **The remaining public interest considerations against disclosure - Document 3**

69. The reasons for the decision on the public interest considerations against disclosure in clause 1(f) and (h) are the same as the reasons given for clause 1(e) in respect of Document 3. The information identified is also the same.

70. As set out above, we are not satisfied that FRNSW have shown that the prejudice element of the consideration in clause 1(e) applies. For the same reasons FRNSW haven't satisfied us that the considerations in clauses 1(f) and (h) of the table to section 14 of the GIPA Act apply.

#### **Document 4**

71. FRNSW asserts that all the information in Document 4 is subject to public interest considerations against disclosure.

#### **Clause 1(h) - 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 commenced and whether or not completed)**

72. In order for the consideration at clause 1(h) of the table to section 14 of the GIPA Act to apply, FRNSW must identify what audit, test, investigation, or review conducted by or on behalf of FRNSW would be prejudiced by revealing the purpose, conduct or results of that audit, test, investigation or review if the information were to be disclosed.

73. In the notice of decision FRNSW states that:

Disclosing any part of document 4 would reveal the purpose and conduct of the review of potential site options for the multi-agency facility. Revealing this information to the Applicant and (in effect) to the wider public would compromise Fire & Rescue NSW's ability to objectively (and without undue external pressures) consider the strategy that the document contains. This, in turn, would adversely affect the integrity and effectiveness of the review as a whole.

Further, as with any other government agency, it is important that Fire & Rescue NSW be able to properly plan, negotiate and acquire sites and facilities to carry out these functions. Assessing the merits of potential sites and other assets is one of Fire & Rescue's deliberative processes.

I am of the view that disclosing document 4 would prejudice this process. I have formed this view on the basis that the information document 4 contains consists of untested government plans and strategy. Releasing this strategy would negatively impact the ability of Fire & Rescue NSW, and its partner agencies, to objectively scrutinize and consider its risks and benefits.

For these reasons, I am of the view that there are overriding public interests against the disclosure of Document 4.

74. FRNSW asserts that disclosure of the following information:

- a. options for a combined emergency services training facility for FRNSW, NSW Police and the NSW Ambulance Service
- b. a whole of government strategy for the set up and site of the proposed facility
- c. detailed analysis of the risks and benefits associated with several possible sites for the facility
- d. logistical, safety and budgetary considerations in connection with each of the sites considered, and

- e. the layout and other requirements for any such training facility

would reveal the purpose and conduct of the review of potential site options for the multi-agency facility. This would prejudice FRNSW's ability to objectively (and without undue external pressures) consider the strategy that the document contains, affecting the integrity and effectiveness of the review as a whole.

75. FRNSW has identified the review that would be prejudiced by releasing the information. FRNSW is reviewing potential site options for the multi-agency facility. We accept that this is relevant.

76. The conduct and effectiveness of the review as a whole is said to be prejudiced by the release of the information because it would affect the ability of FRNSW to objectively (and without undue external pressures) consider the strategy that the document contains.

77. Also, the prejudice is said to be:

Releasing this strategy would negatively impact the ability of Fire & Rescue NSW, and its partner agencies, to objectively scrutinize and consider its risks and benefits.

78. The burden of justifying the decision rests with FRNSW. FRNSW must articulate reasons in support of this (and any other) public interest consideration against disclosure. The information is FRNSW's information and FRNSW is ideally placed to ensure that any reasons given do not reveal any of the information over which FRNSW claims an overriding public interest consideration against disclosure.

79. FRNSW needs to incorporate in any notice of decision not just the identification of the prejudice that will be caused if the information is released, but how that prejudice will occur and what the effect of the prejudice would be on FRNSW. The notice identifies the prejudice as "to objectively scrutinize and consider its risks and benefits" of the strategy in the document. This is a prejudice, but the notice is silent on what the effect of this prejudice would be on FRNSW.

80. The effect of the prejudice is relevant when assessing the significance, or weight, of the public interest consideration against disclosure. The notice of decision does not say how the ability to objectively scrutinise and consider the risks and benefits of the strategy the document contains would be prejudiced by releasing the information, just that it would be prejudiced.

81. We agree that this consideration applies, but we are not persuaded that the weight of this consideration overrides the public interest considerations in favour of disclosure. This is because FRNSW has not provided sufficient evidence about the potential prejudices or the weight of this consideration.

#### **The remaining public interest considerations against disclosure – Document 4**

82. The prejudice identified, and the reasons given for the public interest consideration at clause 1(h) is the same as that given for the public interest considerations in clause 1(e) and (f). For the same reasons we find that FRNSW has not adequately set out its reasons for the decision that these public interest considerations against disclosure override the public interest considerations in favour of disclosing the information in Document 4.

## Balancing the public interest test

83. The GIPA Act does not provide a set formula for:
- working out the weight of public interest considerations for or against disclosure, or
  - deciding if one set of considerations outweighs the other.
84. Whatever approach is taken, this is a question of fact and degree to which different answers may be given without being wrong (as long as the decision maker acts in good faith and makes a decision available to them under the GIPA Act).
85. The balancing of the public interest considerations for and against disclosure “is a question of fact and degree, requiring the weighing of competing matter, and is a task that is not amenable to *mathematical calculation*”.<sup>2</sup>
86. Unfortunately the notice of decision does not provide evidence of the weight given to the public interest considerations in favour of, or against, disclosure. The notice of decision states:
- ...I have found that there are several overriding public interests against disclosure of documents 2 and 4. I have also found that there are overriding public interests against disclosure of parts of document 3. The factors I have taken into account in reaching this decision are further described below...
- The public interest considerations identified by FRNSW are considerations that together may amount to an overriding public interest consideration against disclosure, but they do not operate as exemptions. There may be several public interest considerations against disclosure, but they cannot amount to an overriding public interest consideration against disclosure unless they outweigh the public interest considerations in favour of disclosure.
87. In balancing the public interest test, FRNSW should outline the strength of each consideration for and against disclosure that it has taken into account in deciding whether or not there is an overriding public interest against disclosure.
88. FRNSW did not identify any other public interest considerations in favour of disclosure other than the presumption in section 5 of the GIPA Act. FRNSW has not thoroughly applied the public interest test to the information Ms Lawrence applied to access.
89. We are not persuaded that FRNSW identified all the public interest considerations in favour of disclosure of the information Ms Lawrence applied for. We also do not consider that FRNSW has established that clauses 1(e), (f) and (h) of the table to section 14 of the GIPA Act are relevant public interest considerations against disclosure of all of the information withheld. In addition, irrelevant considerations were taken into account when making the decisions on Documents 2 and 3. Our recommendation must be that FRNSW makes a new decision for Ms Lawrence by way of internal review following the guidance given in this report.

## Observations

90. This review has been complicated by FRNSW including reasons for more than one public interest consideration against disclosure when explaining its findings and reasons for its decision. It is difficult to extract reasons for each public interest consideration

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<sup>2</sup> *Hurst v Wagga Wagga City Council* [2011] NSWADT 207 at [70]

against disclosure when they are collectively set out in a notice of decision. The individual factors of each consideration against, or for, disclosure should be separately identified, applied, and justified. The weight can be considered collectively though.

91. FRNSW should include reference in the notice of decision to considerations in favour of disclosure. FRNSW should identify and explain why any public interest considerations against disclosure apply to the information relevant to the application. The public interest considerations for and against disclosure must then be weighed.
92. In the absence of this process, the notice of decision reads as if an exemption regime applies to the information as was the case under the *Freedom of Information Act 1989*. It is crucial for the weighing up of the considerations for and against disclosure to be included in any notice of decision.
93. Attention should be paid to the Schedule of Documents attached to the notice of decision. While the notice of decision records that there are no public interest considerations against disclosing Document 1, the Schedule records that the public interest considerations against disclosure for Documents 2-4 apply to Document 1.

## Our recommendations

94. We recommend under section 93 of the GIPA Act that FRNSW:
  - a. makes a new decision by way of internal review within **15 working days** of this review report (subject to any permissible extensions under the GIPA Act). There is no fee payable in accordance with section 93(6) of the GIPA Act.
  - b. in making a new decision has regard to the matters raised and the guidance given in this report
  - c. in making the new decision FRNSW takes into account the personal factors of Ms Lawrence's application in favour of disclosure when applying the public interest test. If FRNSW decides to follow our recommendations and make a new decision, FRNSW should advise Ms Lawrence that it is making a new decision and allow her time to make submissions relating to the personal factors of her application
  - d. if, after completing the internal review, FRNSW decides to refuse access to part or all of the information asked for, FRNSW complies with the requirements for notices of decision refusing access under section 61 of the GIPA Act.
95. We ask that FRNSW advise us and Ms Lawrence by **5 October 2012** of the actions FRNSW intends to take in response to our recommendations.

## Review rights

96. Our recommendations 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 Administrative Decisions Tribunal (ADT) for a review of that decision.
97. If Ms Lawrence is dissatisfied with:
  - a. our recommendations, or
  - b. FRNSW's response to the recommendations,Ms Lawrence may ask the ADT to review the original decision of the agency.

98. An application for ADT review can be made up to 20 working days from the date of this report. After this date, the ADT can only review the decision if it agrees to extend this deadline.

99. For information about the process and costs associated with a review by the ADT, please contact the ADT. The ADT's contact details are:

Administrative Decisions Tribunal  
Level 10, 86 Goulburn Street,  
Sydney, NSW, 2000  
Telephone (02) 9377 5711  
Facsimile (02) 9377 5723  
TTY (02) 9377 5859  
Internet <http://www.lawlink.nsw.gov.au/adt>  
email [ag\\_adt@agd.nsw.gov.au](mailto:ag_adt@agd.nsw.gov.au)

100. If FRNSW makes a new reviewable decision as a result of our review, Ms Lawrence 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 OIC or ADT.

### **Closing our file**

101. This review is now closed.

102. If you have any questions, please contact me on 1800 472 679.