

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

Applicant: Applicant
Agency: Cancer Institute NSW
Report date: 27 November 2014
IPC reference: IPC14/R000079
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Summary and background

1. On 22 May 2013, the Applicant applied for information from the Cancer Institute NSW (the Agency) under the Government Information (Public Access) Act 2009 (GIPA Act). It is relevant to this review that the information requested included a copy of the Cancer Institute NSW Tobacco Tracing Surveys completed since February 2009. This information is referred to as the “surveys.”
2. On 30 May 2013 the Agency acknowledged receipt of the application and confirmed that it was valid.
3. On 21 June 2013 the Agency and Applicant agreed to extend the timeframe for deciding the application by five days.
4. On 28 June 2013, the Agency sent its notice of decision to the Applicant. For the purpose of this review, the relevant aspect of the Agency’s decision was its decision to provide access to the Surveys.
5. On 9 July 2013, the Applicant received 43 boxes, which he has informed us contained approximately 80,000 pieces of paper including a printed copy of the survey records.
6. On 21 November 2013, after unsuccessfully asking the Agency for an electronic version of the surveys, the Applicant lodged an application for an internal review of the Agency’s decision.
7. On 12 December 2013, the Agency sent its internal review decision to the Applicant. The Agency decided to provide a USB containing a PDF copy of the survey records. The Applicant has informed our office that what he seeks is not an electronic copy such as a PDF, but a format such as excel.
8. In his request for review, the Applicant asked the Information Commissioner to recommend that the Agency reconsider its decision. The Applicant seeks access in an “accessible and digestible electronic format such as a Microsoft Excel Spreadsheet if it is held [in] that form, or access to another electronic form if that is equally or more convenient.”
9. In the course of this review the Applicant drew our attention to two subsequent requests for information that he has submitted to the Agency, and the provision of electronic information in the form of excel spreadsheets that he received in response to these requests. The Agency has also drawn our attention to these requests and its response. The Informational Commissioner’s review is limited to the Agency’s decision dated 12 December 2013. The Agency’s ability to provide information in excel format is not in dispute – in the course of this review the Agency advised us of the range of formats available when exporting the information. The question for this review is whether the Agency’s decision was justified and whether it is appropriate for the Information Commissioner to make any recommendations in relation to the decision.
10. We are satisfied that the Agency’s decision was justified in accordance with the provisions in the GIPA Act. However, we recommend that the Agency provide access to the information in a microsoft excel format in order to facilitate and encourage access to government information in accordance with the object of the GIPA Act.

Decision under review

11. The decision under review is the Agency's internal review decision dated 12 December 2013.
12. In its internal review decision, the Agency referred to the Applicant's access application and noted that he requested copies of particular documents, including the Cancer Institute NSW Tobacco Tracking Surveys ("the Surveys"), but not "electronic" copies. The request for electronic copies was made at a later date, after the Applicant had been provided with paper copies of the Surveys. The Agency referred to section 72 of the GIPA Act and stated:

... Section 72(2) of the GIPA Act requires me to provide access in the way requested by you, except in the particular circumstances set out in paragraphs (a) to (d) of that subsection. Since your access application requested copies of documents... it is open to me to decide to provide you with copies in paper, electronic, or any other form which can be reasonably described as a "copy" (i.e. in the manner you requested). I do not consider that I am required to provide you with the electronic copies you have now requested, since your request for electronic copies was not part of your initial access application and was made only after you had already been provided with paper copies. In making my new decision, however, I have taken into account your subsequent request, and have nevertheless decided (despite this not being required) to provide you with a copy of the data and information from the Surveys completed since February 2009 in electronic form.

I note that your internal review application, arguably, also includes a request that the agency provide the subject information in a form that can be "readily and meaningfully understood". While it may be unfortunate that the information, in the form held by the agency, is not intelligible to you, I see nothing in the GIPA Act which requires an agency to either manipulate its records, or create new records, so that information held by the agency is made more intelligible to an access applicant. I note that you have now been provided with the information you requested and, additionally, you have been provided with the agency's data dictionary, which can be used to interpret the data. Given the level of training required in order to achieve the specialisation necessary to properly interpret the large datasets held by the agency, I do not see that the agency can do anything further to assist you on this issue, as any further assistance (such as providing you with appropriate training and space within the agency's premises, or translating the agency's datasets into a more readable form) would place an impossible burden on the agency, in addition to being well outside the scope of the GIPA Act...

13. The Agency provided the Applicant with a USB and password instructions. The Applicant has informed our office that the USB contained the information he had previously received in paper form in a PDF format.

The GIPA Act

14. The object of the GIPA Act is set out in section 3 of the legislation:

3 Object of Act

(1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by:

(a) authorising and encouraging the proactive public release of government information by agencies, and

(b) giving members of the public an enforceable right to access government information, and

(c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

(2) It is the intention of Parliament:

(a) that this Act be interpreted and applied so as to further the object of this Act, and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.

15. Pursuant to section 9 of the GIPA Act, the Applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information. The public interest balancing test for determining whether there is an overriding public interest against disclosure is set out in section 13 of the GIPA Act. In this matter the Agency decided to provide access to the information. The question that arises in this review relates to the form of access.
16. Section 72(1) of the GIPA Act sets out forms of access. Section 72(2) requires the Agency to provide access in the way requested by the Applicant unless one of the stated exceptions applies. This is considered further in the next section of this report.
17. Section 80(i) of the GIPA Act provides that 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) is a reviewable decision.
18. In this review, the Agency bears the burden of establishing that its decision is justified (section 97 of the GIPA Act).

Forms of access

19. Section 72(1) of the GIPA Act provides that access to information may be provided in any of the following ways:
 - a. by providing a reasonable opportunity to inspect a record containing the information,
 - b. by providing a copy of a record containing the information,
 - c. by providing access to a record containing the information, together with such facilities as may be necessary to enable the information to be read, viewed or listened to (as appropriate to the kind of record concerned),
 - d. by providing a written transcript of the information in the case of information recorded in an audio record or recorded in shorthand or other encoded format.
20. Section 72(2) requires the Agency to provide access in the way requested by the applicant unless:
 - a. to do so would interfere unreasonably with the operations of the agency or would result in the agency incurring unreasonable additional costs, or

- b. to do so would be detrimental to the proper preservation of the record, or
 - c. to do so would involve an infringement of copyright, or
 - d. there is an overriding public interest against disclosure of the information in the way requested by the applicant.
21. Section 9 of the *Interpretation Act 1987* provides that:
- a. in any Act or instrument, the word “may”, if used to confer a power, indicates that the power may be exercised or not, at discretion.
 - b. in any Act or instrument, the word “shall”, if used to impose a duty, indicates that the duty must be performed.
22. The Applicant’s access application asked for a “copy” of the information he requested, including the Surveys. The Agency provided a copy of the information to him when it provided a paper copy and when it provided a PDF copy of the information.
23. The object of the GIPA Act centres around maintaining and advancing a system of responsible and representative democratic Government that is open, accountable, fair and effective. Although not a legislative requirement, it is appropriate for Agencies to consider the most effective and helpful way to provide information in response to an access application. The considerations in section 72(2) are a useful guide to an Agency to determine if it is then appropriate to provide the information in that format. Sometimes this will be identified by the Applicant in their access application; however the Applicant will usually be less familiar with the information and available formats for disclosure than the Agency. When the Applicant asked for a “copy” of the information, it is not likely that he anticipated receiving 43 boxes of paper; in a quantity that he has advised us is approximately 80,000 individual pages. Similarly, although a PDF copy is an “electronic copy” of the information, in the context of correspondence between the Applicant and the Agency prior to the internal review request it is apparent that the Applicant was seeking access to the information in an accessible format. We understand from information provided during the course of this review that the Agency has provided the Applicant with an excel format of the information in response to subsequent requests. This is also the preferable outcome in this case.
24. Section 92 of the GIPA Act empowers the Information Commissioner to make such recommendations to an agency about a decision under review as the Information Commissioner thinks appropriate. In this matter, although the Agency’s decision was available under the provisions of the GIPA Act, having considered the object of the GIPA Act, the Information Commissioner recommends that the Agency provide the Applicant with a copy of the information in excel format.

Recommendations

25. We are satisfied that the Agency’s decision was justified in accordance with the provisions in the GIPA Act. However, we recommend that the Agency provide access to the information in a Microsoft Excel format in order to facilitate and encourage access to government information in accordance with the objects of the GIPA Act.
26. In making future decisions regarding the format in which to release information, we recommend that the Agency have regard to the matters raised and guidance given in this report.

27. We ask that the Agency advise the Applicant and us by **5 December 2014** of the actions to be taken in response to our recommendations.

Review rights

28. 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.
29. The Applicant has the right to ask the NCAT to review the Agency's decision.
30. 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>

Completion of this review

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

Elizabeth Tydd
Information Commissioner