

Government Information (Public Access) Act 2009



INTERNAL REVIEW - NOTICE OF DECISION

Applicant:	Dre
File Ref:	Original GIPA Ref: 24-3443 – Internal Review Ref 24-3478
Decision maker:	Ann Gibson, Senior Information and Privacy Officer
Date of decision:	24 June 2023

Table of Contents

1.	Decision.....	1
2.	Conduct of internal review.....	1
3.	Summary of access application.....	1
4.	Reasons for decision and findings	2
5.	Review rights.....	4
6.	Further information.	4

1. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the *Government Information (Public Access) Act 2009* ('GIPA Act'), to decide your GIPA Internal Review application which was received on 9 June 2024. Your application became valid that same day following the NSW Department of Climate Change, Energy, the Environment and Water's ('DCCEEW's') waiver of the Internal Review application fee in the amount of \$40.00.

Following review of the information provided for internal review and the original decision-maker's decision, I have decided to uphold the original decision.

I find that your access application, GIPA Ref: 24-3443, is invalid as it does not meet the requirements under section 41(1)(a)-(e) of the GIPA Act which sets out how to make an access application.

In this Notice of Decision, I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

- a) the reasons for my decision and the findings on any important questions of fact underlying those reasons.

2. Conduct of internal review

This internal review is conducted in compliance with section 84 of the GIPA Act. I have made my decision as if the decision being reviewed had not been made and my decision is made as if it were being made when your access application was originally received. I am no less senior than the person who made the original decision.

3. Summary of access application

On Monday 27 May 2024 your formal request for access to information, made under the *Government Information (Public Access) Act 2009* (GIPA Act), was received by DCCEEW. Your request sought information in relation to the Kariong Hieroglyphs Assessment Report.

I note you advise you did make a request for this information through the Right to Know website on 12 May 2024 which was acknowledged as a GIPA request by the Regulatory Practice and Services Division NSW Environment Protection Authority on 14 May 2024.

The Senior Administrative Officer, Governance, Strategic Services and Advice responded as follows:

'We do not have any record of receiving a formal GIPA request from you. Please note that under the NSW GIPA Act a formal request must be accompanied by a \$30 application fee to be considered valid. For this reason any requests submitted via the Right To Know website are considered informal requests.'

In support of this advice, I refer you to section 8 of the GIPA Act: in particular to s.8(1) and (3) which state:

- (1) *An agency is authorised to release government information held by it to a person in response to an informal request by the person (that is, a request*

Notice of Decision

that is not an access application) unless there is an overriding public interest against disclosure of that information.

- (3) *An agency cannot be required to disclose government information pursuant to an informal request and cannot be required to consider a informal request for government information.*

Following receipt of the advice from the Senior Administrative Officer, you made the above-mentioned formal request for access to the Kariong Hieroglyphs information sought.

4. Reasons for decision and findings on any important questions of fact underlying those reasons

Legislative requirements when making a GIPA access application

As mentioned above, when making an access application it must meet the requirements of s. 41 of the GIPA Act which sets out:

- (1) *An application or other request for government information is not a valid access application unless it complies with the following requirements (the formal requirements) for access applications –*
- (a) *it must be in writing sent by post to or lodged at an office of the agency concerned or made in the manner approved by the agency under subsection (2),*
 - (b) *it must clearly indicate that it is an an access application made under this Act,*
 - (c) *it must be accompanied by a fee of \$30,*
 - (d) *it must state the name of the applicant and a postal or email address as the address for correspondence in connection with the application,*
 - (e) *it must include such information as is reasonably necessary to enable the government information applied for to be identified.*
- (2) *An agency may approve additional facilities for the making of an access application or the payment of an application fee.*
- (3) *An access application is not considered to have been received by an agency until it is actually received by the agency.*

Findings

I note the following in relation to your access application:

- in respect of s.41(c), your application was not accompanied by the fee of \$30 although being advised by NPWS that you would need to lodge a formal GIPA request for the information sought and pay the application fee of \$30.
- DCCEEW did not waive or reduce the application fee as it is entitled to do under s127 of the Act, advising you accordingly in an email dated 28 May 2024 from Jackson Wong.
- although a discount of the **processing** charge is permitted under s.66(1) of the GIPA Act, the discount only applies to the processing charge and **not the application fee**.

Notice of Decision

- in relation to s.41(d), your application does not state your name rather it provides the descriptor 'DRE'. Although 'name' is not specifically defined in the GIPA Act, the expectation is that an applicant will provide their legal name i.e., their first name and last name, without the use of initials or nicknames, as it appears on an applicant's source documents such as Driving Licence, Concession cards etc. 'DRE' is information that is insufficient to properly meet the requirement under this provision as it is unclear whether it is a representation of initials, first or second name or a nickname.
- in regard to s.41(e), your email dated 26 May 2024 did not include such information as is reasonably necessary to enable the government information applied for to be identified. Although you may have articulated this previously to DCCEEW's National Parks and Wildlife Services ('NPWS') Branch, it did not accompany your access application, nor was there any timeframe given to assist the search for the particular information sought.

Decisions in support

s.41(1) (a)-(e) -

In support of the above findings I refer you to the below cases.

The Appeal Panel decision in *Department of Communities and Justice v Zonneville [2020] NSWCATAP 126* confirms that an application for government information cannot be severed into both valid and invalid parts because an application must comply with all of the requirements in section 41(1) (a)-(e) to be a valid 'access application' within the meaning of section 4 of the GIPA Act.

The Appeal Panel (at [32]-[411]) set out its analysis for its statutory interpretation and a purposive construction of the text of the requirements under section 41 of the GIPA Act. The Appeal Panel

- On a plain reading of the text of section 41 (1), each of the requirements at paragraphs (a) - (e) must be complied with (at [37]).

s. 66 – Discounted processing charge – special public benefit

In support of application for special public benefit the Tribunal found in *Shoebridge v Forestry Corporation (2016) NSWCATAD 93* stated that section 66 (1) of the GIPA Act provides that an applicant is entitled to a 50% reduction in a **processing charge** imposed by an agency if the agency is satisfied that the information applied for is of special benefit to the public generally.

In this case the Tribunal found that Mr Shoebridge **had made out the requirements of section 66**, finding that there should be a 50% reduction in the processing fees and charges to be paid by Mr Shoebridge.

As mentioned, consideration given to special public benefit relates only to processing charges, not to the application fee.

To assist you in making future requests for 'special public benefit' it would be helpful for you to provide the reason/s to the agency to aid its assessment of entitlement to discounted processing charges.

This decision is reviewable under s.80 of the *GIPA Act*.

5. Review rights

If you disagree with any of the decisions in this Internal Review you may seek a review under Division 3 and Division 4, respectively of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns. My contact details are set out below.

You have two review options:

- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

There is a time limit for lodging a review

You have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

There are further resources available to assist you

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled Your review rights under the GIPA Act. You will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au.

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).

6. Further information

If you have any questions about this notice or would like any further information, please contact me by telephone on (02) 9934 0858, mobile 0418 480 919 or via email ann.gibson@dpie.nsw.gov.au