

## Government Bulletin - 25 March 2015

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The recent decisions in *Pittwater Council v Walker* [2015] NSWCATAD 34 (**Walker**) and *Palerang Council, Queanbeyan City Council & Goulburn Mulwaree Council v Powell* [2015] NSWCATAD 44 (**Powell**) provide insights into the interpretation of section 110 of the *Government Information (Public Access) Act 2009* (**GIPA Act**) and the factors that the Tribunal will consider in such applications.

Section 110(1) provides that the Tribunal may order that a person is not permitted to make an access application without first obtaining approval of the Tribunal if the Tribunal is satisfied that the person has made at least three access applications in the previous two years that lack merit, defined as where:

- the agency decides the application by refusing to deal with the application in its entirety;
- the [agency](#) decides the application by deciding that none of the information applied for is held by the [agency](#); or
- the applicant's entitlement to access lapses without that access being provided.

In *Walker* the respondent had made 38 applications to Council under the GIPA Act between 3 June 2013 and 30 January 2015 relating to the removal of the Queen's portrait and in relation to parking restrictions. In *Powell*, the respondent had made 37 applications to the applicants and other related agencies under the GIPA Act relating to the *City to Soil* Project. Of those, 18 applications were regarded as lacking merit under section 110.

Section 110(1) confers a broad discretion on the Tribunal as to whether a restraint order should be made once the precondition of three unmeritorious applications is satisfied. In considering whether to exercise its discretion, the Tribunal had regard to:

- the number and types of applications over a specified period made by the individual;
- the resources available to the agency;
- the subject matter of the applications;
- the responses to the applications;
- proportionality; and
- the conduct of the access applicant (in *Powell*).

The Tribunal in *Walker* noted that the GIPA Act provided little guidance as to any further terms of the order, including whether an order can be made for a specified period. The Tribunal ordered that Mr Walker is restrained from making any access applications to the Council without first obtaining approval from the Tribunal, until further order of the Tribunal.

In Powell, the Tribunal made an order that Mr Powell may only make an access application to the Councils having first obtained the approval of the Tribunal, in accordance with certain terms including:

- not more than one access application is to be made to any of the Councils in any two month period;
- an access application must not be made to any of the Councils within 14 days of having made a previous application to that Council; and
- an access application shall not be made in respect of a document or documents the subject of any previous access application.

The order, which is to remain in force for two years, also limited the form of any communication with the Councils in relation to any application to being in writing, to the exclusion of offensive, abusive, threatening or insulting language.

These decisions highlight the broad scope available to the Tribunal in applying its discretion as well as the balancing act between the right conferred on the public to access government information and conduct that unreasonably interferes with the operations of agencies or which is manifestly unreasonable.

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#### **Pittwater Council v Walker [2015] NSWCATAD 34**

The Respondent is restrained from making any access application to Pittwater Council without first obtaining approval of the Tribunal pursuant to section 110 (1) of the Government Information Public Access Act 2009.

Government Information Public Access Act 2009 – Access to information – Restraint provisions – whether to make restraining order – beneficial jurisdiction – supervisory function of Tribunal – general jurisdiction of Tribunal – Standing of Information Commissioner in proceedings.

Civil and Administrative Tribunal Act 2013;

Freedom of Information Act 1982 (Cth);

Government Information (Public Access) Act 2009;

Government Information (Information Commissioner) Act 2009;

Local Government Act 1993