



Health

File No: PA18/74
Doc No: H18/62592

Mr Philip Charles Walker
184 Warriewood Road
MONA VALE NSW 2103

Dear Mr Walker

Your application for access to government information – Notice of Decision

I refer to your access application dated 2 June 2018, formally transferred from Service NSW on 15 June 2018, under the *Government Information (Public Access) Act 2009* (GIPA Act) for the following information:

“The business case for demolition of main building, nurses home, engineering & hydrotherapy pool at Mona Vale Hospital”

Please find attached a Notice of Decision.

You can ask for this decision to be reviewed. Your review rights are summarised in the enclosed leaflet.

If you have any questions regarding this matter, please contact me on (02) 9391 9263.

Yours sincerely

Sonia Makira
GIPA Specialist
Corporate Governance & Risk Management

Date: 13 July 2018

Enc: Notice of Decision
Your Review Rights Under the GIPA Act

NSW Ministry of Health

ABN 92 697 899 630

73 Miller St North Sydney NSW 2060
Locked Mail Bag 961 North Sydney NSW 2059
Tel. (02) 9391 9000 Fax. (02) 9391 9101
Website. www.health.nsw.gov.au

Government Information (Public Access) Act 2009
Notice of Decision

Applicant	Mr Philip Walker
Agency	Ministry of Health
File Ref:	PA18/74
Decision maker:	Sonia Makira, GIPA Specialist
Date of decision:	13 July 2018

Summary of 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 access application.

You have applied for information under the GIPA Act relating to the ten (10) most recent mental health ministerial briefings and attachments to the Minister, prior to 27 February 2018.

In the last month, the Ministry has restructured its handling of its right to information unit which has caused a delay in the processing of your application. This delay is regretted.

The summary of my decision is set out in the Schedule to this Notice. I have determined to:

- (a) Refuse access to deal with your application under Section 60(1)(b)

You can ask for a review of this decision. For details about how to do so, see part 4 of this Notice.

1. Summary of access application

On 15 June 2018, the Ministry received an access application from you under the Government Information (Public Access) Act 2009 for the following information:

“The business case for demolition of main building, nurses home, engineering & hydrotherapy pool at Mona Vale Hospital”

On 13 July 2018, I made my determination regarding your GIPA formal access application.

2. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application.

Searches were conducted by Health Infrastructure who was identified as holding documents that may be within the scope of your application.

One document was identified as containing information falling within the scope of your application. This document is identified in the Schedule.

3. Decision

I am authorised by the principal officer, for the purposes of section 9 (3) of the GIPA Act, to decide your access application.

I have decided to refuse to deal with your access application under s. 60(1)(b) of the *GIPA Act* as:

the agency has already decided a previous application for the information concerned (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the agency would make a different decision on the application.

The reason for refusing to deal with your application is that a decision has already been made on the exact same document found within scope of one of your previous GIPA applications to the Ministry that was determined on 27 July 2017 (posted to you on 16 August 2017), our reference: PA17/91.

In that application you had requested the following information:

"2013 Review and conclusions from the Mona Vale Hospital as referred to in 3rd March 2017 letter from Health Infrastructure"

The document found within scope was:

Update to the Northern Beaches Health Service Redevelopment Business Case - April -201322042013

The document within scope of this new request is precisely the same business case.

In the original decision dated 27 July 2017, it was determined to refuse access to this business case as this document was presented to the Expenditure Review Committee of Cabinet, and is therefore a conclusive presumption against disclosure applies under Schedule 1, Clause 2 of the GIPA Act.

I have reviewed the document and have confirmed with Health Infrastructure that there are no other business cases that are in scope of your GIPA application request.

As such, the decision to provide you with access to this business case would not be any different to the original decision dated 27 July 2017.

The decision to refuse access to this business case in this application would also be under Clause 2 of Schedule 2 – Cabinet Privilege.

Clause 2 of Schedule 1 to the GIPA Act sets out the type of documents that contain Cabinet information. Clause 2(1) of Schedule 1 to the GIPA Act states:

It is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in this Act as Cabinet information) contained in any of the following documents...

Notice of Decision

- (a) a document prepared for the dominant purpose of its being submitted to Cabinet for Cabinet's consideration (whether or not the document is actually submitted to Cabinet); and*
- (d) a document prepared after Cabinet's deliberation or decision on a matter that would reveal or tend to reveal information concerning any of those deliberations or decisions*

An agency is not required to balance the public interest considerations for and against disclosure before refusing access to information that is prepared for the dominant purpose of being submitted to Cabinet for consideration or reveals, or tends to reveal, cabinet deliberations.

According to *D'Adam v New South Wales Treasury* [2014] NSWCATAD 68, agencies must meet three conditions in order to rely on clause 2(1)(a):

- a. there is information;*
- b. the information must be contained in a document; and*
- c. the document is prepared for the dominant purpose of being submitted to Cabinet for Cabinet's consideration*

In regards to the business case requested in this application the first two conditions are met.

In relation to the third condition, it was confirmed by Health Infrastructure that this business case was prepared and submitted through to Cabinet (ERC) on or around 30 April 2013, and is the most up to date version.

This document is considered to be an official cabinet record.

The Ministry is also satisfied that the document was prepared for the dominant purpose of being submitted to Cabinet. The three conditions have been met and the Ministry is able to rely on the conclusive presumption against disclosure under clause 2(1)(a) of Schedule 1 of the GIPA Act.

Furthermore, the document would reveal or tend to reveal information concerning Cabinet deliberations or decisions. The document contains information that if disclosed would reveal information concerning a cabinet decision surrounding the new Northern Beaches Hospital. Therefore, the Ministry is able to rely on the conclusive presumption against disclosure under clause 2(1)(d) of Schedule 1 of the GIPA Act.

This decision is reviewable under s. 80(c) of the GIPA Act, as discussed in part 4 of this Notice.

4. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 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 three review options:

- internal review by another officer of this agency, who is no less senior than me;
- external review by the Information Commissioner; or

Notice of Decision

- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

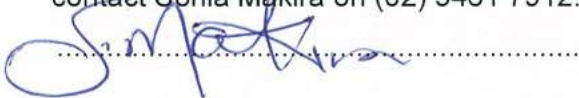
To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website:

www.ipc.nsw.gov.au.

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

5. Further information

If you have any questions about this notice or would like any further information, please contact Sonia Makira on (02) 9461 7912.



Sonia Makira
GIPA Specialist
Corporate Governance & Risk Management

Date: 13 July 2018

Enc: Your Review Rights Under the GIPA Act

Schedule of Documents

No.	Date	Description of record that contains the information	Format of record	Released or withheld	Relevant public interest consideration(s) against disclosure
1	22 April 2013	Update to the Northern Beaches Health Service Redevelopment Business Case - April -201322042013	Business Case	Refused	Section 60(1)(b) Clause 2 of Schedule 2

PITTWATER ALLIANCE

<https://pittwateralliance.weebly.com/>

pittwateralliance@gmail.com



Your review rights under the GIPA Act

Fact sheet

June 2014

The right to information system in NSW aims to foster responsible and representative government that is open, fair and effective.

You have the right to request a review of certain decisions made by government agencies about the release of information under the *Government Information (Public Access) Act 2009* (GIPA Act):

- a) a decision that an application is not a valid access application
- b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- d) a decision to provide access or to refuse to provide access to information in response to an access application
- e) a decision that government information is not held by the agency
- f) a decision that information applied for is already available to the applicant
- g) a decision to refuse to confirm or deny that information is held by the agency
- h) a decision to defer the provision of access to information in response to an access application
- i) 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)
- j) a decision to impose a processing charge or to require an advance deposit,
- k) a decision to refuse a reduction in a processing charge
- l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- m) a decision to include information in a disclosure log despite an objection by the authorised objector (or a decision that the authorised objector was not entitled to object).

You generally have three review options.

1. Internal review

You have **20 working days** after the notice of a decision has been posted to you to ask for an internal review by the agency that made the decision.

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review, but you can ask for an external review (see below).

The review must be carried out by an officer who is no less senior than the person who made the original decision. The review decision must be made as if it was a fresh application.

There is a \$40 fee for an internal review application. No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under section 93 of the GIPA Act. In this case, you cannot be charged any review fee.

The agency must acknowledge your application within **five** working days of receiving it. The agency must decide the internal review within **15** working days (this can be extended by **10** working days if the agency has to consult with a third party, or by agreement with you).

2. External review by the Information Commissioner

If you disagree with any of the decisions listed above, you can ask for a review by the Information Commissioner.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the Information Commissioner to review it.

If you are not the access applicant, you must seek an internal review before applying for review by the Information Commissioner. However, if an internal review cannot be sought (if a Minister or their personal staff, or the principal officer of an agency made the decision), you can seek a review by the Information Commissioner.

You have **40 working days** from being notified of the decision to ask for a review by the Information Commissioner.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

Note: You cannot ask the Information Commissioner to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal (NCAT).

3. External review by the NSW Civil and Administrative Tribunal (NCAT)

If you disagree with any of the decisions listed above, you can ask for a review by NCAT. You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by NCAT.

You have **40 working days** from being notified of the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days** from being notified of the Information Commission's review outcome to apply to NCAT.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au