



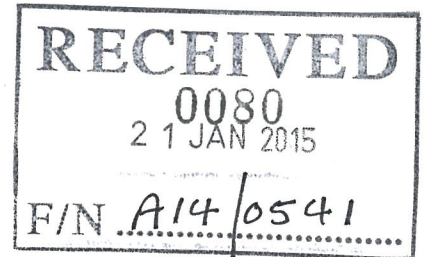
Premier & Cabinet

Sep
cc Gen Sec

Reference: A1081910

20 JAN 2015

Ms Anne Gardiner
General Secretary
NSW Public Service Association
GPO Box 3365
SYDNEY NSW 2001



Dear Ms Gardiner

Application for access to government information

I refer to your application for an internal review of a decision made by the Department of Premier and Cabinet (the Department) under the *Government Information (Public Access) Act 2009* (the GIPA Act) dated 16 December 2014 and received by the Department on 19 December 2014, in respect of an access application seeking access to:

"All documents from 7 September 2013 to 14 March 2014 concerning the impact of the Federal Government's proposed Paid Parental Leave Scheme on existing entitlements for NSW public servants.

In relation to emails, ... have requested only those between the Commonwealth and the Department of Premier and Cabinet.

The application excludes:

- *all draft versions of documents;*
- *any media articles or media summaries; and*
- *any correspondence from a member of the public."*

I understand that on 14 January 2015, Ms Jane Singleton, from your office, agreed to an extension of the internal review decision period of 2 working days. I apologise for the delay in completing your internal review application.

I note that in your internal review application you object to this Department's refusal to provide access to records described in Annexure A in the Department's original decision dated 26 November 2014.

In accordance with the GIPA Act, the internal review is a review of this original decision. The internal review is to be done by making a new decision as if the original decision had not been made.

Decision about access

I have reviewed the records described in Annexure A and have today decided to uphold the original decision of refusing to provide access to those records. The reasons for my decision are set out below.

Statement of reasons

There is a presumption in favour of disclosing government information. The GIPA Act provides that there will only be an overriding public interest against disclosure if the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure (section 13).

I have reviewed the 11 documents and I have found the following public interest consideration in favour of disclosure of the information:

- disclosure of the information could reasonably be expected to promote open discussion of public affairs or contribute to positive and informed debate on an issue of public importance.

I have also considered whether there is a public interest against disclosure of the documents and noted whether disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally) (Item 1 in the table to section 14 of the GIPA Act):

- prejudice relations with, or the obtaining of confidential information from, another government (item 1(c));
- 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 (item 1(e)); and
- result in the disclosure of information provided to an agency in confidence (item 1(g)).

Consequently, I consider that:

- Parts of records 1, 3, 5, 9 to 11 contain information that was not specifically sought in your application and, is therefore, not relevant to the information applied for. I am satisfied that this information should not be released, on the grounds that they are not relevant, under section 74 of the GIPA Act.
- The remaining parts of records 1, 3, 5, 9 to 11 (not covered under section 74), and records 2, 4, 6, 7 and 8 contain information that may prejudice relations or a deliberative process and contain confidential information under item 1(c), 1(e) and 1(g) in the table to section 14.

I understand that the PPL Scheme is still the subject of ongoing COAG discussions and remains a highly sensitive reform policy. The release of this information would reveal the deliberations of COAG and the NSW Government, and could affect the openness with which those governments continue to conduct their negotiations at COAG (Item 1(g) in the table to section 14).

I believe that disclosing these records could also reasonably be expected to prejudice the obtaining of confidential information from the other governments in COAG, both generally, and in relation to the Commonwealth Government's proposed PPL Scheme (Items 1(c) and 1(e) in the table to section 14).

Record 5 (paragraph 3.4 on page 2) and record 6 (paragraph 3 on page 3) contain client legal privilege information covered under Clause 5(1) of Schedule 1 of the GIPA Act.

Section 14(1) of the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 to the Act.

In making my final decision, I have also reviewed the objections to release, received by the Department, in the course of consultation under section 54 of the GIPA Act, when your original application was processed by the Department. These objections were referred to in the Department's previous letter to you.

For the reasons outlined above, I am satisfied that these documents should not be released.

Fees and charges

In accordance with section 87 of the GIPA Act, I have decided that no processing charges should be imposed for this application.

I have also decided to refund your \$40 application fee as your internal review application was not decided within the review period. A cheque for this amount will be forwarded separately.

Rights of review

These decisions are reviewable decisions under section 80(d) of the Act. If you are aggrieved by my decisions, you may seek review under Part 5 of the GIPA Act.

There are two forms of review:

- external review by the Information Commissioner, or
- external review by the NSW Civil and Administrative Tribunal.

Your review rights are summarised in the enclosed fact sheet. You have 40 working days to apply for an external review.

Inquiries

Please contact Sandra Scacciotti, Senior Project Officer, Information Access Unit, Office of General Counsel, on telephone (02) 9228 3168 if you have any questions in relation to your application.

Yours sincerely



Paul Miller
General Counsel

ANNEXURE A

REFUSED ACCESS

Schedule of records

No.	Description of record	Location of record in Department	Format of record	Overriding public interest against disclosure?	GIPA Act section references
1	COAG Senior Officials Meeting 11 October 2013 Agenda Paper	Intergovernmental Branch	Document	Yes	Items 1(c), (e) and (g) in the table to section 14
2	COAG Senior Officials Meeting 22 November 2013 Agenda Paper	Intergovernmental Branch	Document	Yes	Items 1(c), (e) and (g) in the table to section 14
3	COAG Senior Officials Meeting 22 November 2013 Final Record of Meeting	Intergovernmental Branch	Document	Yes	Items 1(c), (e) and (g) in the table to section 14
4	COAG Senior Officials Meeting 6 December 2013 Agenda Paper	Intergovernmental Branch	Document	Yes	Items 1(c), (e) and (g) in the table to section 14
5	COAG Senior Officials Meeting 6 December 2013 Final Record of Meeting	Intergovernmental Branch	Document	Yes	Items 1(c), (e) and (g) in the table to section 14

						14 and clause 5, Schedule 1
6	COAG Meeting 13 December 2013 Agenda Paper	Intergovernmental Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14 and clause 5, Schedule 1
7	COAG Deputy Heads of Treasuries/Deputy Senior Officials Meeting 11 February 2014 Agenda Paper	State Productivity Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14
8	COAG Senior Officials Meeting 7 March 2014 Agenda Paper	Intergovernmental Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14
9	Department of Premier and Cabinet paper for COAG Senior Officials Meeting 22 November 2013 dated 20 November 2013	Intergovernmental Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14
10	Department of Premier and Cabinet paper for COAG Meeting 13 December 2013 dated 11 December 2013	Intergovernmental Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14
11	Department of Premier and Cabinet paper for COAG Senior Officials Meeting 7 March 2014 dated 5 March 2014	Intergovernmental Branch	Document	Yes		Items 1(c), (e) and (g) in the table to section 14



Your review rights under the GIPA Act

Fact sheet
Aug 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.

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).

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).

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 Commissioner'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