

Marrickville Legal Centre

The Director  
Justice Policy  
Department of Police and Justice  
GPO Box 6  
**SYDNEY NSW 2001**

**BY EMAIL: [justice.policy@agd.nsw.gov.au](mailto:justice.policy@agd.nsw.gov.au)**

Friday, 29 August 2014

Dear Director,

**RE: Review of *Government Information (Public Access) Act 2009 (NSW)***

Thank you for the opportunity to make a submission to the NSW Attorney General's review of the *Government Information (Public Access) Act 2009 (NSW) (GIPA)*.

**A. About Marrickville Legal Centre**

Marrickville Legal Centre (MLC) is a community legal centre, which has for 35 years been providing free legal and tenancy advice and assistance to disadvantaged residents in Sydney's inner western and southern suburbs. MLC also has a specialist Youth Legal Service, which provides legal assistance to all young people across New South Wales. The Centre is staffed by a dedicated team of staff and volunteer solicitors and students.

In the course of our work, our solicitors and advocates regularly make GIPA requests of NSW government departments. We also advise the general public on how to make GIPA requests, about the NSW *Information Privacy Principles* and about the role of the NSW Information Commissioner.

There are several issues arising from our day-to-day legal practice that we would like to raise in our submission.

## **B. GIPA**

### ***Formal and Informal requests are confusing***

GIPA creates informal<sup>1</sup> and formal<sup>2</sup> requests for the public release of government information. Having two types of requests is problematic. It confuses our clients, who do not know which type of request to use. There are also two application forms (one for formal, one for informal), which also confuses our clients.

We generally advise clients to complete the formal request application. If a client fills out an informal request form that is rejected, then this causes delay and frustration. To avoid this delay and frustration, it is usually easier and quicker to make a formal request.

To avoid this confusion, we recommend that the distinction between formal and informal requests be removed. It would be simpler to have just one type of GIPA request.

### ***Third Party Authorities need to be standardised across departments***

Each government department has its own form for authorising third-parties to request information on behalf of someone else. Often departments also require different forms of proof of identity. Some departments will accept our solicitors' standard Authority form, while other departments insist that we use their own authority form.

As a community legal centre, we often make GIPA requests on behalf of our clients. NSW Police do not require written authority when a solicitor makes a GIPA request on behalf of their client. Other departments will reject an application made without a written third-party authority. It is also frustrating that one department will accept our standard solicitors Authority form, while others will not. Housing NSW, for example, will reject applications that do not include their required proof of identity documents.

We recommend that, where a community legal centre represents a client, there should be no need for written authority for a GIPA application. Alternatively, we propose that our standard authority forms should be satisfactory and suitable for the application process.

### ***GIPA Fees should be abolished***

The NSW GIPA legislation contains an application fee paid at the time of lodgment.<sup>3</sup> This fee, however, is refundable when a government department does not comply with the set time limit.<sup>4</sup>

Some government GIPA units are under-resourced and find it difficult to comply with the 20-day time-limit.<sup>5</sup> This creates a situation where individuals lodge cheques, which are then processed and later refunded due to delay.

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<sup>1</sup> *Government Information (Public Access) Act 2009* (NSW) s 8

<sup>2</sup> *Government Information (Public Access) Act 2009* (NSW) s 41

<sup>3</sup> *Government Information (Public Access) Act 2009* (NSW) s 64

<sup>4</sup> *Government Information (Public Access) Act 2009* (NSW) s 63

It would be beneficial and more efficient to abolish the application fee. We note that all federal Freedom Of Information requests are free, unless there are circumstances warranting a charge.<sup>6</sup>

### **Case Study**

*Ms X is a migrant client who was a victim of domestic violence. She made a claim for victim's compensation from Victims Services NSW. On her behalf, we requested documents from NSW Police to assist our client with her claim. The fee was \$15.*

*It took more than a year to obtain this information. This entire process consisted of frequent call-backs and inconsistent replies from the NSW Police Information Access and Subpoena Unit. When the police finally provided the information, it was too late for our client as the Victim Services submissions had been filed. Fortunately in this situation it did not impact our client's claim, but the delay could have seriously impacted on the outcome for our client.*

### **C. GIPA and PPIPA**

#### ***NSW Police should comply with the IPP: Amendment and Annotation***

Under the old *Freedom of Information Act 1989 (NSW) (FOI)*,<sup>7</sup> individuals had the right to *request* amendment of their government records.<sup>8</sup> If the government agency refused to amend the individual's records, then the individual had the right to *annotate* their own records.<sup>9</sup>

The right to request to amend and the right to annotate were not reproduced in GIPA. These rights were moved to the *Information Protection Principles (IPP)* in the *Privacy and Personal Information Protection Act 1998 (NSW) (PPIPA)*.<sup>10</sup>

However, this caused a problem for our clients because NSW Police do not need to comply with the IPP.<sup>11</sup>

Sometimes our clients complain that events recorded on the police COPS database are inaccurate. They are surprised to learn that they no longer have the right to request amendment or to annotate these police records. Under the old FOI Act, they had these rights.

The NSW Police database keeps an enormous amount of information about NSW residents. It is in the public interest and in the interests of good policing that

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<sup>5</sup> *Government Information (Public Access) Act 2009 (NSW) s 57*

<sup>6</sup> see *Freedom of Information Act 1982 (Cth) s 15*

<sup>7</sup> *Freedom of Information Act 1989 (NSW)*

<sup>8</sup> *Freedom of Information Act 1989 (NSW) s 39*

<sup>9</sup> *Freedom of Information Act 1989 (NSW) s 46*

<sup>10</sup> *Privacy and Personal Information Protection Act 1998 (NSW) Pt 2 Div 1.*

<sup>11</sup> *Privacy and Personal Information Protection Act 1998 (NSW) s 27*, also exempts agencies such as ICAC, ICAC Inspector and Inspector's staff and NSW Crime Commission from *Information Protection Principles*.

that information is accurate, relevant, up-to-date and not misleading.<sup>12</sup> If police choose not to amend their records, then a resident should have the right to annotate records about themselves, so long as the annotation is reasonable.

The discretion of section 27 should be narrowed to protect information about on-going police investigations only. Information kept by NSW Police about concluded investigations or COPS events should be subject to the *Information Protection Principles*.

#### **Case Study**

*Mr Z lives in a small unit in Sydney's suburbs. He called police complaining about a neighbour. Mr Z later made a GIPA request and discovered that police had recorded on the COPS database their opinion that Mr Z suffers from a mental illness.*

*Mr Z was very upset. He got a doctor's report stating that he has no mental illnesses. He sent the report to NSW Police who refused to delete the police officers' opinion from the COPS database.*

*When Mr Z asked for the record to be annotated under section 15 of PIPPA, NSW Police declined on the grounds that they are not required to comply with the Information Privacy Principles.*


*Mr Z is worried that the next time he asks police for help, that the police officers attending will read the COPS database and presume that Mr Z has a mental illness. Mr Z has lost his confidence in NSW Police.*

#### **D. Conclusion**

We appreciate you taking the time to consider our concerns identified in this submission, and we are happy if required to expand on any of these issues.

If you have any questions about our submissions please contact Michael Walton on (02) 9559-2899.

Yours faithfully,



Michael Walton  
Principal Solicitor

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<sup>12</sup> *Privacy and Personal Information Protection Act 1998 (NSW) s 15(1)(b)*