PALERANG COUNCIL

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File: 415425/IM0011

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The Director, Justice Policy
Department of Justice
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Dear Sir/Madam

Submission on the review of the
***Government Information (Public Access) Act* 2009**

Palerang Council welcomes the opportunity to make the following submission in relation to the review by your Department of the *Government Information (Public Access) Act 2009* (the Act).

Open Access Information

NSW councils are required to provide their Open Access Information (Schedule 1 of the Regulation) free of charge to members of the public, including all information regarding development applications whenever they have been created. This requirement can cause a large administrative and financial burden on councils. As an example, Palerang Council was created in 2004 by amalgamation of the whole of Tallaganda Shire and parts of Yarrowlumla, Gunning, Mulwaree and Cooma-Monaro Councils. To comply with current requirements under the Act, Palerang Council is required to provide access to all records, including development applications, held by the respective sections of its five predecessor councils.

Some councils have records dating back more than 100 years and the Act places no restrictions on the number of requests a person may make, nor a limit on the volume of files any one person can request. There is no provision in the Act to deal with unreasonable and repeated requests for Open Access Information. The financial burden for councils in dealing with these requests is significant since, in many cases, archived files that councils have are kept in off-site storage facilities, requiring the payment of retrieval costs, as well as the organisation for files to be sent back to the off-site storage at a later date. It should be noted that most of these files are in hard copy and the time and cost involved in scanning all these files is unrealistic.

Section 53(5) of the Act refers to the unreasonable diversion of resources relating to Access Applications. Palerang Council wishes to draw attention to the situation it has experienced with one particular applicant, a "Mr X", who has, in the past 12 months alone, lodged 18 formal GIPA applications and numerous informal applications with Palerang Council, and has emailed and faxed this Council 241 times on the same subject within the past year. Further, Mr X has conducted a vicious campaign of harassment and unfounded accusations (dismissed by the courts) against Palerang Councillors, senior and junior staff, its contractors and its lawyers since 2008.

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Council is aware that Mr X has lodged similar applications under the Act on the same subject with two adjoining councils, Queanbeyan and Goulburn Mulwaree. He is also conducting similar vicious campaigns against those Councils, and State departmental staff.

For a small, under-resourced rural council such as Palerang, the diversion of resources, not to mention emotional capital, expended in dealing with Mr X's activities over many years is considered unreasonable beyond all measures of the term, so much so that Palerang, Queanbeyan and Goulburn Mulwaree Councils have now lodged a joint application to NCAT under s.110 of the Act to place a restraint order on Mr X.

Council requests that the review consider:-

(a) a provision in the Act for agencies to refuse applications due to an unreasonable diversion of resources in relation to requests for Open Access Information;
(b) limiting the number of requests a person can make in a year for the same Open Access Information;
(c) the ability to charge significantly higher rates per application if a person requests the same or similar information on multiple occasions;
(d) the ability of agencies to place their own restraint order on serial applicants when it is clear that the applicant will never be satisfied and the diversion of resources is considered unreasonable; and
(e) reviewing the words in Schedule 1 Part 3 of the Regulation that relate to development applications so there is a limit on the accessibility of development applications available free of charge e.g. the current version of a development application for a property could be free of charge and previous versions available at a cost.

Fees under the Act

The $30 application and processing fee was introduced in 1989 under the previous *Freedom of Information Act*. There has been no increase in this statutory fee since its introduction. Given the increased financial burden of storage and retrieval costs outlined above, and the necessary allocation of staff and other resources to deal with the increasing number of formal and informal access applications under the Act, Council recommends that these fees be substantially increased immediately, and provision be included in the Act for agencies to make annual increases of these fees in line with CPI.

Interaction between GIPA Act 2009 and Privacy and Personal Information Protection Act 1998 (PPIP Act)

The review should consider the interaction of the above two Acts and attempt to resolve more clearly the conflict they provide for agencies in dealing with requests for information. The PPIP Act promotes the protection of personal information and the use of information only for the purpose for which it was collected. In contrast, the GIPA Act promotes the accessibility of all government information to the public.

Copyright

Section 6(1) of the Act requires councils to make their Open Access Information publicly available and Section 6(2) states that it should be available on a website maintained by the agency. However, some of the documents to which this applies are copyright documents such as plans, drawings, statements etc, and there is no protection for councils in providing copies of these documents as required under the Act.

Section 6(6) of the Act states: "Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright."

Many councils interpret Section 6(6) to mean that they therefore cannot provide any documents which are copyright unless permission by the copyright owner has been granted. Given a significant number of copyright documents are submitted in respect of development applications, this contradicts the objects of the Act in providing greater openness and transparency of government information.

The Australian Law Review Commission produced a report in November 2013 which was tabled in Federal Parliament on Copyright and the Digital Economy. The report recommends (p.330) that local government be given an exemption to copyright where a statute requires public access. Council requests that the Department of Justice make representations to the Australian Government to request that the *Copyright Act 1968* be amended to include recommendation 15.3 (shown below) of the Australian Law Review Commission's report on Copyright and the Digital Economy, in order to resolve the copyright issues currently being experienced by local government.

> *"15.3 The ALRC recommends that the current exceptions for parliamentary libraries and judicial proceedings should be retained, and that further exceptions should be enacted. These exceptions should apply to use for public inquiries and tribunal proceedings, uses where a statute requires public access, and use of material sent to governments in the course of public business. Governments should also be able to rely on all of the other exceptions in the Copyright Act. These exceptions should be available to Commonwealth, state and local governments".*

Thank you for the opportunity to make this submission. Council looks forward to the outcome of the review of the Act.

Yours sincerely

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