



GIPA989

Ms Joan Browning
Newcastle East Residents Group Inc.
44 Nobbys Road
Newcastle East NSW 2300

Sent to: joan.browning@gmail.com

14 May 2018

Dear Ms Browning,

Government Information (Public Access) Act 2009 application – GIPA989
Notice of Decision

I refer to your access application under the *Government Information (Public Access) Act 2009* ('GIPA Act') received on **8 March 2018**.

I am authorised under section 9(3) of the GIPA Act, to decide your access application.

I have decided to refuse to deal with your application, because dealing with it would require an unreasonable and substantial diversion of resources. Please see the attached Notice of Decision for further details about my decision.

If you disagree with my decision, you may seek review under Part 5 of the GIPA Act. Please refer to the attached information sheet and further details in the Notice of Decision about your review rights under the GIPA Act.

If you have any questions in respect of this letter or your review rights, please contact me on (02) 9995 6004 (email: paul.kim@environment.nsw.gov.au.au).

Yours sincerely

PAUL KIM
A/g Senior Governance Officer
Privacy and Information Access

Enclosure – information sheet on review rights

REASONS FOR DECISION

Your access application

On **8 March 2018**, the Office of Environment and Heritage (OEH) received your application and the \$30 application fee. You sought access to the following information:

“1. All documents including correspondence, memoranda, facsimiles, spreadsheets, briefing notes, working papers, plans, diagrams, artist impressions as well as hardcopy reproductions of any electronic communications including emails and SMS messages in your possession containing any reference to the Condition of Consent for the Coates Hire Newcastle 500 event held by V8 Supercars Australia (Supercars) in Newcastle, NSW between 24 and 26 November 2017 (the Event) (S60/2017/13) (the Consent) and particularly:

(a) the Interim Landscape Rehabilitation Plan and:

(i) any change in the width or roadways within the Event precinct in Newcastle East NSW to accommodate a shared pedestrian/cycleway route once the Event was completed each year;

(ii) the removal, reinstatement and planting of trees in the Event precinct in Newcastle East before, during and after the Event;

(iii) the replacement of kerbs, guttering, footpaths and street inlay signs removed or modified for the purpose of the Event;

(b) the sources of funding for any matters in points (a)(i), (ii) and (iii) above;

(c) the approval of any signage associated with the Event including directional and advertising or promotional signage;

(d) all enquiries made by the Department to Supercars and any other entity performing work in relation to preparation for the Event in relation to the effect of such work on the condition of all heritage buildings/items within the Event precinct;

(e) all documents received by the Department in relation to any testing and record of the heritage affects of the Event races, test runs and other related activities as required under the Consent, including the effects of sound vibrations;

(f) all enquiries made by the Department in relation to the matters referenced in point (h) above;

(g) archival photographic recording required to be undertaken prior to the commencement of, and during the works being undertaken by Supercars and its related entities under the Consent that required the monitoring and documentation of changes occurring to any heritage building/items during such works;

(h) any excavation report prepared by the nominated Excavation Director;

(i) any requests made by the Department for any material as required in point (j) above;

(j) the bond/bank guarantee required under the Consent from Supercars; and

(k) all documents received by and sent from the Manager, Heritage Division in relation to the adequacy of barriers around historic structures during the Event as required by Consent.”

On **12 March 2018**, in my acknowledgement letter, a request to refine the scope of your application was sent outlining suggestions to reduce processing time.

You responded to my request by email on **16 March 2018** stating:

“The scope of the request has been refined in accordance with your request to now focus on documents that evidence of the Event promoter’s compliance with, and the OEH’s administration of, the Conditions of Consent - S60/2017/33 which were issued on 5 April 2017.

The following refinements have been made:

1. the request is now only requiring materials directly relating to or created for compliance with the Conditions of Consent. Therefore all of the material requested is less than 12 months old;
2. the removal of some classes and subclasses of materials requested; and
3. the insertion of certain dates during which some classes of documents were created.”

An attachment to this response also states:

1. For this request, the Consent means:

the Conditions of Consent issued for the Coates Hire Newcastle 500 event held by V8 Supercars Australia (**Supercars**) in Newcastle, NSW between 24 and 26 November 2017 (**the Event**) (S60/2017/33”).

2. For this request, Records has the same meaning as in the GIPA Act.
3. The request is for the following in the possession of the Office of Environment and Heritage (**OEH**):
 - (a) the Interim Landscape Rehabilitation Plan referenced in the Consent;
 - (b) all Records prepared by any entity conducting building or construction work between April 2017 and 24 November 2017 within the Event precinct in preparation for the Event that contains reference to the effect of such work on the condition of any heritage buildings/items within the Event precinct;
 - (c) all Records of requests made by the OEH to Supercars or other entity for any Records of the type referred to in (b) above;
 - (d) Records of any testing and record of the heritage effects conducted between 1 and 26 November 2017 of the Event races, test runs and other related activities as required under the Consent, including the effects of sound vibrations;
 - (e) all Records of requests made by the OEH to Supercars or other entity for any Records of the type referred to in (d) above;
 - (f) all archival photographic recordings that were undertaken prior to the commencement of, and during the works undertaken by Supercars and its related entities under the Consent that required the monitoring and documentation of changes occurring to any heritage building/items during such works;

- (g) any excavation report prepared by the nominated Excavation Director under or in compliance with the Consent between 1 April 2017 and 26 November 2017; and
- (h) all Records relating to the bond/bank guarantee required under the Consent.”

Again, on the **16 April 2018**, I advised you by email that the scope of your application is still unreasonable.

On **4 May 2018**, you responded stating:

“We refer to your email dated 16 April 2018.

You have indicated that the revised scope of our GIPA request is still too broad.

Following a legal review, we do not accept your view.

We respond as follows:

- the records requested in 3(a), (g) and (h) of our scope are clear and easily capable of identification and production. We presume you do not have any issue with the production of these documents. If we are incorrect, please advise;
- the records requested in 3(b) of our scope are confined to a date period, a geographic location and only to heritage matters as identified. These are documents that are directly connected to a condition of the Consent, so we reasonably expect that they would be stored in a manner for OEH to determine compliance with that Consent;
- the records requested in 3(c) and (e) of our scope only require the production of records relating to requests made by OEH, and not any response. This must surely limit the scope of the search for these records;
- the records requested in 3(d) of our scope relate to a direct condition of the Consent. We reasonably expect that such documents should be easily identifiable as they would have been reviewed by OEH to determine compliance with the Consent; and
- the records requested in 3(f) of our scope relate specifically to “archival photographic recordings” for a specific location within a specific date range. This must surely limit the scope of the search for these records.

Please review the request in light of these submissions and advise your revised response.

The applicant remains prepared to pay the production fee as identified

If there continue to remain issues, please articulate your concerns. However, we reserve our rights to seek NCAT review of any decision to decline production.”

Relevant information

A search of OEH’s records was undertaken to identify all government information falling within the scope of your application. The search involved identifying information from the agency’s records management system, officer emails and computer drives.

A large volume of material has been identified as relevant to your application by Heritage Operations. This consists of approximately 600 records within scope.

Decision

In my letter of 14 March 2018, you were advised, in accordance with section 60 of the GIPA Act, that in order to obtain the information you have requested, it has been estimated that it would take approximately 137 hours.

I have today decided to refuse to deal with your application in accordance with section 60(1)(a) of the *Government Information (Public Access) Act 2009*, which states:

“(1) An agency may refuse to deal with an access application (in whole or in part) for any of the following reasons (and for no other reason):

(a) dealing with the application would require an unreasonable and substantial diversion of the agency’s resources,”

The processing work required includes not only locating and identifying the information requested, but scanning and examining relevant records, consulting third parties, weighing up the balance of public interest factors, consulting with third parties and making an access decision. The time required to perform those functions has been estimated as set out in the following table.

Task to be carried out	Estimated hours	Estimated cost
Time already spent dealing with the application, including identifying information sources	At least 3 hours	\$90
Search area to search for and review records to identify relevant information. Difficult to estimate but using the information provided so far, at least 50 hours (5 minutes per record and at least 600 records)	At least 50 hours	\$1500
Convert records into pdf format and number them for consultation and decision-making purposes (will depend on the number of records, but as an example, say 5 minutes per record and at least 600 records)	At least 50 hours	\$1500
Undertake third party consultation (will depend on the number of third parties)	At least 4 hours	\$120
Decision maker to examine the records, weigh up the balance of public interest factors, consider third party objections, make a decision about access and prepare Notice/s of Decision and schedules of documents to which access may be refused in full or in part (will depend on a number of factors)	At least 21 hours	\$630
Delete information from records which is irrelevant or for which there is an overriding public interest against disclosure	At least 9 hours	\$270
ESTIMATED SUBTOTAL		\$4110
ESTIMATED TOTAL (n.b. processing estimates are indicative only)	At least 137 hours	\$2,025 at the discounted rate of \$15 per hour after the first two hours

I acknowledge that you are willing to pay the processing fees stated at 137 hours, however this request is unreasonable to accommodate in its current form.

However, section 60(4) of the GIPA Act requires OEH to provide a reasonable opportunity for an applicant to amend the application. Reasonable opportunity was provided to you to amend your application by reducing the scope. For example, as stated to you in my email on **16 April 2018**:

“The use of “all records” in your scope will require OEH to review every record and correspondence between third parties involved, internal emails and electronic records and any subject matter stated in your request.”

As stated in your response on **4 May 2018**, you do not accept the agency’s view, that the estimates of processing from the ‘tasks to be carried out’ is unreasonable, there is no opportunity to further refine your application.

Having regard to the above and the fact that you have not amended your application, I have today made a decision to refuse to deal with your application.

Review Rights

If you do not agree with the decisions that I have made, you may seek review under Part 5 of the GIPA Act. Before you do so, I would encourage you to speak with me if you have any questions about this notice or require further information on your rights of review.

You have three avenues of review: internal review by a senior officer of the Environment Protection Authority, external review by the Information Commissioner or external review by the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT). Please see the enclosed information sheet for more details about your review rights.

You should note that the time for seeking an internal review is 20 working days, or 40 working days for external review, after the date of this notice of decision. That means you have until **12 June 2018** to lodge an internal review, or until **10 July 2017** to lodge an application for an external review.

Further information about your review rights under the GIPA Act is available by contacting the Information and Privacy Commission on free call 1800 472 679, or from their website: www.ipc.nsw.gov.au

You can also contact the Administrative and Equal Opportunity Division of NCAT by telephone on 1300 006 228 or go to their website: www.ncat.nsw.gov.au

Further information

If you have any questions about this notice or would like any further information, please contact me.



PAUL KIM
A/g Senior Governance Officer
Privacy and Information Access