Destination NSW

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	**Elaine Johnson**
File Ref:	**DNSWGA38**
Decision-maker:	**Neville D'Costa – Right to Information Officer**
Date of decision:	**28 February 2017**

1. Summary of access application

On 6 February 2017, we received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). You asked for the following information:

Seek copies of all documents held by DNSW relating to the Coates Hire Newcastle 500 proposed to take place on 24-26 November 2017, created between 1 February 2016 and 31 January 2017; including the following:

a) The Partnership Agreement with VSCA and Newcastle Council and any documents which contribute to the partnership agreement, or which could be seen as contributing to interpreting the partnership;

b) If there is no formal agreement, all documents which document discussion between DNSW and VSCA, and DNSW and Newcastle City Council regarding the staging of the race in Newcastle Local Government Area;

c) The information provided to DNSW Board members to assist their deliberations when they considered the proposal to support locating the event in Newcastle;

d) All material and information given to Newcastle City Council for the purpose of briefing Council staff and councillors;

e) All documents discussing or reporting on assessments of economic activity generated by the VASC; and

f) All documents which discuss impacts on heritage values of Newcastle East; impacts on public amenity and use of the foreshore area and Newcastle beach and surrounds; social impact on local residents.

2. 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, under section 58(1)(d) of the GIPA Act, to refuse to provide access to the information because there is an overriding public interest against disclosure of the information. Our reasoning follows in this Notice of Decision. In some instances, the information requested does not exist.

Please also see responses to your questions.

a) The Partnership Agreement with VSCA and Newcastle Council and any documents which contribute to the partnership agreement, or which could be seen as contributing to interpreting the partnership.

Our searches have found that DNSW does not hold in its files any partnership agreement between VSCA and Newcastle City Council.

Furthermore, the decision to invest in the Newcastle Supercars event for DNSW is pursuant to a decision of Cabinet (Cabinet Submissions, Ministerial Briefs and Parliamentary Notes documents). Therefore any related information to this decision is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) i.e. 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. Additional reasoning as per the GIPA Act is provided below.

b) If there is no formal agreement, all documents which document discussion between DNSW and VSCA, and DNSW and Newcastle City Council regarding the staging of the race in Newcastle Local Government Area.

There is a letter of offer between DNSW and V8SC in September 2016; a letter from V8SC dated July 2016; and correspondence being three letters dated May, June and July 2016 and three emails between DNSW and Newcastle City Council in June and July 2016 regarding the staging of the race in Newcastle Local Government Area.

Furthermore, these letters contain related information to a decision of Cabinet whereby it is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) - 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. Additional reasoning as per the GIPA Act is provided below.

c) The information provided to DNSW Board members to assist their deliberations when they considered the proposal to support locating the event in Newcastle;

The Destination NSW Board was provided with an Event Investment Submission on the Newcastle Supercars event. However, we cannot release this document as it contains information pursuant to a decision of Cabinet. Therefore any related information to this decision is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) - 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. Additional reasoning as per the GIPA Act is provided below.

However, the Destination NSW Board endorses an investment based on the following criteria:

1. Economic Impact

This criterion relates to the ability of an event to bring new expenditure and/or future investment to NSW. The key factors that need to be addressed in demonstrating this impact are:

- **Number of anticipated participants**: These are participants, spectators, officers and other visitors who will travel to the host location specifically for the event.
- **Average length of stay**: The number of days and (if applicable) nights that participants will spend in the host destination.
- **Expenditure**: Estimated average daily expenditure. Please note: Sydney event organisers should not include spends by intrastate visitors in their submissions.

If this is the first time that the event is to be held, Destination NSW teams will gauge potential economic impact through discussions with the event organiser and comparisons with events of a similar nature.

If the event has been held before, previous performance data will be used to assess potential impact.

We inform you that the race is expected to inject more than $57 million to the Hunter region over the next five years, and attract 81,000 visitors from around NSW, on top of millions of television viewers around the world.

2. Strategic and Marketing Impact

This refers to the event's effectiveness in driving marketing outcomes for Sydney and NSW including, but not limited to:

- **Promotional message**: The message that the event delivers about the host location.
- **Audience**: The nature and size of the event audience.
- **Brand alignment**: If the event is in keeping with the brand image of the destination, how it enhances or aligns with the desired image and values of the host location.
- **Marketing alignment**: How promotional strategies for the event support the marketing objectives of the host location.

- **Areas of Expertise**: How the event may raise or create awareness of NSW expertise e.g. in the creative industries - lighting and set design, etc.

- **Media Impact**: The potential for domestic and international media coverage.

3. Community Impact

Is assessed by the capacity of the event to create positive engagement with large and diverse sections of the community - and generate community pride. This may include:

- **Participation**: The opportunity for the local community to participate in the event.

- **Skill development**: Giving residents of NSW the opportunity to acquire or improve skills.

- **Business involvement**: How the local business community can engage with the event.

- **Volunteers**: Ensuring the involvement of the community at large where possible e.g. through volunteer programs.

4. International Markets

An important consideration for Destination NSW is if the event can deliver benefits such as media publicity or travel packaging in targeted international markets. These include: China, Germany, Korea, Hong Kong, India, Japan, Malaysia, New Zealand, Singapore, the UK and the USA.

5. Private Sector Involvement

The financial contribution provided by non-government sources is assessed as a percentage of the event budget.

6. Seasonal Capacity

The timing of proposed events will be assessed based on impacts to seasonal hotel occupancy. Events have the potential to even-out seasonal highs and lows in hotel demand. However if an event is held during peak occupancy periods this may affect the level of visitation it can attract to a host location.

7. Key Performance Objectives

Events supported by Destination NSW are subject to contractual deliverables that meet our strategic objectives. Some performance incentives may apply.

Destination NSW's remit is to double overnight visitor expenditure by 2020.

d) <u>All material and information given to Newcastle City Council for the purpose of briefing Council staff and councillors;</u>

All decisions made by Newcastle City Council follow their internal council processes. We request you contact Council regarding their decision and seek information as per Newcastle City Council meeting minute's website.

Please note the following news articles regarding Newcastle City Council's decision - http://www.newcastle.nsw.gov.au/Council/News/Latest-News/Council-backs-supercar-champs-for-Newcastle and http://www.newcastle.nsw.gov.au/Council/News/Latest-News/Council-update

Please note Destination NSW sent the following media articles to Newcastle City Council as a comparative analysis of other races though - http://www.goldcoastbulletin.com.au/sport/gold-coast-600/supercars-threat-to-leave-gold-coast-if-new-deal-not-offered-by-government/news-story/fd89d8a6c9e19358eb7a630444e047d3; and http://www.dailytelegraph.com.au/sport/motor-sport/supercars-could-quit-queensland-for-nsw-if-townsville-and-gold-coast-deals-not-offered/news-story/f58d4a2985451c64999877ee60f28dfc. This was as per an email between Destination NSW and Newcastle City Council in June 2016.

e) All documents discussing or reporting on assessments of economic activity generated by the VASC; and

There are no documents discussing or reporting on assessments of economic activity generated by the VASC. All economic assessment is done by Destination NSW following its selection criteria. This is publically available at this website - http://www.destinationnsw.com.au/events/support-for-events.

f) All documents which discuss impacts on heritage values of Newcastle East; impacts on public amenity and use of the foreshore area and Newcastle beach and surrounds; social impact on local residents.

Destination NSW has internal commercial in confidence working documents and correspondence on such matters. One document relates to initial responses to the NSW Premier and Ministers and the other is a draft document of information for approval.

However, the final information following these two documents is publicly available on these websites - http://www.newcastle.nsw.gov.au/Supercars/Home , http://www.newcastle.nsw.gov.au/Supercars/Residents, http://www.supercars.com/newcastle/, http://www.visitnewcastle.com.au/, and http://www.newcastle.nsw.gov.au/Supercars/Infrastructure.

There are also Meeting Minutes dated October 2016, November 2016 (two meetings - Department of Premier and IEDM project meeting) January 2017 and a comparison document dated May 2016 however these are withheld as per reasoning below - section 14 of the GIPA Act, Table item 1 (g). For the Department of Premier meeting minutes, the minutes contain information further to a Cabinet decision. Therefore, it is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) i.e. 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.

In this Notice of Decision I will explain my additional reasons as well. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

(a) the reasons for my decision;

(b) the findings on any important questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based; and

(c) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure.

You can ask for a review of this decision. For details about how to do so, see part 5 of this Notice.

3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the Government information you asked for in your application. I have searched our records to find any information that falls within the scope of your application.

The relevant documents found are noted above.

4. The public interest test

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing Government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

(a) identifying any public interest considerations in favour of disclosure

(b) identifying any relevant public interest considerations against disclosure, and

(c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

(a) in a way that promotes the objects of the GIPA Act

(b) with regard to any relevant guidelines issued by the Information Commissioner

(c) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant)

(d) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant), and

(e) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

4.1 Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing Government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

Before turning to the considerations in favour of disclosure relevant to your application, I set out below some background information on the functions and activities of Destination NSW:

The functions of Destination NSW

Destination NSW is a statutory authority funded principally by the NSW Government and generates cooperative marketing revenue. Destination NSW is responsible for attracting and nurturing events, marketing and promoting NSW and implementing tourism strategies as outlined by the NSW Government's Visitor Economy Industry Action Plan.

Destination NSW notes that all investment and expenditure of taxpayer funds go through a due diligence process and a thorough assessment to ensure return on the investment. Destination NSW when assessing and making an event or marketing investment strives to maximise economic, marketing and community benefits for NSW.

All investments are made with the NSW Government's goal of doubling tourism expenditure by 2020 in mind. We note the impact of the Tourism industry on the NSW State economy namely tourism alone supports 289,600 jobs in NSW; direct tourism employment in NSW ranks above employment for agriculture, forestry and fishing and mining; tourism consumption is $28.7 billion and overall tourism contributes $11.1 billion to the State's Gross State product (statistics from the Final Report and Visitor Economy Action Plan for NSW – June 2012).

Destination NSW informs the public of its operations via its Agency Publication Guide and annual report. Destination NSW also invites members of the public to comment on its functions and provide feedback via the process in the Destination NSW Agency Information Guide on www.destinationnsw.com.au.

Public interest factors

Turning now to the relevant public interest factors, I find the following public interest factors in favour of disclosing the information apply:

1. disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability and contribute to positive and informed debate on issues of public importance;

2. disclosure of the information could reasonably be expected to inform the public about the role of Destination NSW and its operations and policies; and

3. disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds, by making the detail of the amount of NSW government spending on events transparent.

I will take these considerations into account when I apply the public interest test.

4.2 Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act. To show that they are relevant to the information you asked for, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

I have identified the following additional considerations against disclosure as being relevant to your application:

Section 14 GIPA Act, Table 1 (f)

Section 14 of the GIPA Act, Table item 1 (f) provides that,

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

(f) Prejudice the effective exercise by an agency of the agency's functions,

The principal object of Destination NSW is to achieve economic and social benefits for the people of NSW through the development of tourism and the securing of major events. Part of Destination NSW's statutory mandate is to provide funding and support to event organisers in order to create, secure, promote and retain attractive tourist, sporting, cultural and community events for NSW.[1]

Destination NSW, although a statutory agency, has a significant commercial aspect to its events functions. It receives commercial proposals for events and evaluates those in a competitive setting, in order to maximise the return for the NSW Government, and ultimately the taxpayer. It is important that event promoters and organisers can have confidence that their dealings with Destination NSW will be conducted on a commercial-in-confidence basis.

To the extent Destination NSW competes against other State and International Governments or commercial event sponsors elsewhere for particular events, the disclosure of the amounts it is prepared to pay an event organiser and information could weaken the NSW negotiating position against competing event sponsors, and raise the amount Destination NSW is required ultimately to pay to secure or retain an event for NSW. This could result in the loss of events for NSW or higher costs for NSW taxpayers. We note that there is competition for Supercars events with races being part of major events calendars for the majority of Australian states and territories. This includes the last race of the Virgin Australia Supercar Championship series.

I find that this effect would come within the scope of paragraph 1(f).

It is necessary to make an assessment of whether these consequences would be likely to occur as a result of disclosing the information. The following factors are relevant:

- As to the first matter, Destination NSW has customarily not disclosed amounts it commits to events, and has indicated to event organisers that such matters will be held as commercial in confidence information.
- I consider that the disclosure of the information now, in these circumstances and effectively in breach of applicable confidentiality clauses in the relevant correspondence would be likely to undermine the readiness of event organisers to enter into commercial in confidence discussions with Destination NSW, and their confidence in the ability and willingness of Destination NSW to maintain its contractual commitments (including as to the protection of commercially sensitive information) to event organisers.
- As to the second matter, as Destination NSW operates in a highly competitive market, there is little to prevent parts or all of the events secured by Destination NSW from being staged elsewhere, including outside NSW, in future years.
- All events further contribute to the NSW Economy by causing a ripple effect of increased expenditure across a wide number of industries. These include the arts, food and entertainment, hotels and accommodation, as well as airlines and taxi industries. In this

[1] *Destination NSW Act* 2011, sections 12 and 13.

regard, the consequences are significant, because they could jeopardise the agency's functions and cause great economic and cultural loss to NSW.

- We note the impact of the Tourism industry on the NSW State economy namely tourism alone supports 289,600 jobs in NSW; direct tourism employment in NSW ranks above employment for agriculture, forestry and fishing and mining; tourism consumption is $28.7 billion and overall tourism contributes $11.1 billion to the State's Gross State product (statistics from the Final Report and Visitor Economy Action Plan for NSW – June 2012).
- Also, events and their contribution go beyond monetary value in terms of providing community engagement and education opportunities.
- Finally, the degree of positive news and media coverage of events, particularly in developed economies worldwide, effectively provides a vast amount of free advertising for Newcastle in overseas tourist markets.
- I consider that the status of the events and the attendant economic benefits are such that organisers of similar events in other States and internationally would be keen to capitalise on any opportunity to develop a competing event. I also consider that the disclosure of the amount of funding provided by a major government sponsor would strongly assist such competitors in promoting established events or introducing new ones.
- In order to fulfil its functions, Destination NSW needs to have a diversified portfolio of events covering regional events, art, culture, entertainment, business, sport and lifestyle. However, it has a limited budget provided by the NSW Treasury. If Destination NSW were required to spend more money on events as a consequence of the disclosure of its sponsorship amount, Destination NSW's ability to fulfil its functions would be diminished because its return on investment would decrease and amount of assistance it could provide for other events would be diminished.
- The consequences of losing all or part of events that bring in this level of economic contribution, as well as its intrinsic social and political value to the Newcastle community, and power in attracting international press and publicity attention to Newcastle, would be very grave. I am entitled to consider the magnitude of the consequences of the loss of this event as well as the likelihood of that occurring as a result of the disclosure of information to potential competitors.

Section 14 GIPA Act, Table 1 (g)

Section 14 of the GIPA Act, Table item 1 (g) provides that,

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

(g) Found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,

The application requests certain information that is held by the agency in various documentary records.

However, for the purposes of consideration 1(g), that information may have a confidential status that is derived from particular confidentiality contractual terms. Therefore certain contractual terms may be relevant to determining whether consideration (1)(g) applies to the information requested.

A legal obligation of confidence is a substantive obligation. If a person is subject to an obligation of confidence in respect of particular information, that person is obliged to keep that information confidential wherever it appears, including in secondary sources and derivative records. For that reason, if information is subject to an obligation of confidence then the person cannot disclose that same information via a new record or in a different record not containing a confidentiality provision; to do so would breach the person's obligation of confidence and expose it to legal action and potentially injunctive relief to restrain the breach.

Consideration 1(g) has two limbs. The first limb relates to the effect of disclosure founding an action against an agency for breach of confidence. The second limb relates to disclosure of information provided to the agency in confidence.

The first limb is relevant to this determination and is considered below.

The information in the correspondence and documents details that the parties must keep confidential and not disclose confidential information except as permitted.

Disclosure of the information requested in the application would therefore require Destination NSW to breach its confidentiality obligations.

In these circumstances I find that disclosure of the requested information would entitle the other party to bring an action against the agency for breach of confidence.

The confidentiality provisions in the correspondence are substantive provisions, any breach of which would constitute a breach of the law. The NSW Government and its agencies must act in accordance with the law.

Contractual provisions of this type must also be recognised as holding significant commercial value. If Destination NSW chose to breach these confidentiality provisions it would undermine the confidence the private sector has in the NSW Government and prejudice the ability of the agency to do business in the future.

Section 14 GIPA Act, Table 4 (a)

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

(a) Undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,

As set out above in respect of item 1(f), Destination NSW operates in a competitive market.

Destination NSW competes with other Australian and overseas government and non-government bodies for the rights to attract, create, promote and retain attractive major events. It competes for events through the payment of direct funding, event sponsorship, the provision of benefits in kind from itself and other parts of government, and the provision of research, logistical support and expertise to event organisers. We again note that there is competition for Supercars events with races being part of major events and tourism calendars for the majority of Australian states and territories. This includes the last race of the Virgin Australia Supercar Championship series.

If other competitors for events were able to obtain information about the payments and other benefits provided, or proposed to be provided, by Destination NSW, it would enable them to compete more effectively for those events by pitching their bids at a level designed to beat Destination NSW's bids. This would result in Destination NSW either losing events, or being required to pay more, or provide more benefits in order to bid for or retain events. This would ultimately be detrimental to the interests of NSW and its taxpayers.

Similarly, if event organisers themselves were able to utilise obtain information about the payments and other benefits provided, or proposed to be provided, by Destination NSW, it would enable them to compare payment and benefit levels for different events and make greater demands of Destination NSW, to similar effect.

This informational asymmetry could have a negative effect on competitive neutrality in the events market and diminish Destination NSW's ability to compete in that market, and correspondingly enhance the competitiveness of its governmental (including overseas) competitors, some of which are likely to be subject to less stringent freedom of information requirements.

Destination NSW seeks to obtain a number of outcomes from events including V8 Supercar races in Newcastle, including economic impacts, the marketing and promotion of Newcastle as a destination, and community benefits.

If the requested information is disclosed, other event organisers may seek to argue that the benefits obtained by Destination NSW relative to the amount of money provided to one event are such that these other event organisers ought to receive more funding than they currently do. This could undermine the current position of Destination NSW in the events market and result in a general escalation of the sponsorship amounts it is required to pay.

Section 14 GIPA Act, Table 4 (b)

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

(b) Reveal commercial-in-confidence provisions of a government contract;

Schedule 4 to the GIPA Act provides that:

Commercial-in-confidence provisions *of a contract means any provisions of the contract that disclose:*

(a) *The contractor's financing arrangements, or*

(b) *The contractor's cost structure or profit margins, or*

(c) *The contractor's full base case financial model, or*

(d) *Any intellectual property in which the contractor has an interest, or*

(e) *Any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.*

government contract *means any of the following contracts between an agency and a private sector entity:*

(a) a contract under which a party agrees to undertake a specific project (such as a construction, infrastructure or property development project),

(b) a contract under which a party agrees to provide specific goods or services (such as information technology services), other than a contract of employment,

(c) a contract under which a party agrees to transfer real property to another party to the contract,

(d) *a lease of real property.*

The financial support from the NSW Government for V8 Supercar races in Newcastle is provided pursuant to correspondence between Destination NSW to the other party, which is the event organiser of the respective Supercar race, and Destination NSW and Newcastle City Council.

For the purposes of consideration 4(d), the event organiser is an event contractor with the government and its financing arrangements include this financial support from Destination NSW. These financing arrangements are provided by terms in all of the correspondence described in section 3 above.

The financial support information requested by the application is a fundamental term in the correspondence between the government and the event organiser. To provide access to this information would have the effect of revealing the substance of the event organiser's funding arrangement for the respective event.

The dollar amount of the direct financial support and the terms that provide for that direct financial support in under contract cannot be separated. The amount of financial support is an integral part of the event organiser's financing arrangements, and together with other publicly available information would disclose the event organiser's financing arrangements in a thorough way.

Accordingly, I find that there is a public interest consideration against disclosure of the requested information because disclosure of that information could reasonably be expected to reveal commercial-in-confidence provisions of a government contract, specifically the contractor's financing arrangements.

Section 14 GIPA Act, Table 4 (d)

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

(d) prejudice any person's legitimate business, commercial, professional or financial interests,

The event organiser for V8 Supercars is a commercial business. As discussed below in section 4.3, Destination NSW was required to consult with the event organiser as a third party related to this decision. The event organiser responded that disclosure of the information would prejudice its business and commercial interests.

Each business has a large number of stakeholders, many of which rely on it for their business, professional or financial interests. These stakeholders include broadcasters, ticket sellers, food and entertainment providers, sponsors and members of the hotel and accommodation industry.

Releasing the requested financial support figures to the public is relevant to consideration 4(d) because it may prejudice many of the business and professional interests involved with or benefiting from the events.

The information requested is not currently in the public domain. The amount of investment provided by the NSW Government is commercially sensitive information with regard to other entities that provide sponsorship dollars to the events. The dollar amount of financial support and the corresponding benefits provided to sponsors vary between sponsorship deals.

Destination NSW achieves a degree of prominence in the publicity and advertising at events. It enjoys influence over how the event is organized and conducted. These benefits are secured by its contracts. Other sponsors enjoy different benefits as each relationship occurs on a separate footing. There is a commercial imperative underpinning the confidentiality of these arrangements and release of this information could prejudice the current degree of funding and cooperation between sponsors.

I am entitled to take into account the particular effect on any person's business or commercial interests from releasing the information requested. The events funding arrangements to some extent determine the success of the event and the economic impact, or ripple effect, for stakeholders. Disclosure of the information could prejudice the maintenance and cooperation required for future financing arrangements.

In all of the circumstances I find that, particularly in the context of the market for financial sponsorship, the information requested is commercially sensitive. Although the information appears to fall within a narrow compass, the potential impact of disclosure of this information is that it could prejudice the financial and commercial interests of the event organiser and the wider stakeholders who are reliant on the success of the event. Accordingly, I attribute a significant amount of weight to consideration 4(d).

4.3 Consultation

The information that you asked for includes information that relates to the business, commercial, professional or financial interests of a third party. I was therefore required, under section 54 of the GIPA Act, to consult with that third party in making this decision.

Destination NSW contacted V8 Supercars Australia and Newcastle City Council and informed them that access to certain information had been requested under the GIPA Act.

Destination NSW specified to the third party the information requested.

V8 Supercars Australia and Newcastle City Council objected to the information being disclosed.

The objections do not mean that I cannot release the information. However, I must take them into account when making my decision. I have therefore considered them when applying and balancing the public interest test.

V8 Supercars Australia and Newcastle City Council also have rights at law under the GIPA Act.

4.4 Balancing the public interest test

I have considered the relevant public interest considerations in favour of disclosure and against disclosure of the information you have requested. I have also considered the objections raised by the third party.

I have found that there are public interest considerations both in favour of disclosure and against disclosure. The public interest considerations against disclosure are to be weighed against the public interest considerations in favour of disclosure.

Furthermore, the decision to invest in the Newcastle Supercars event for DNSW is pursuant to a decision of Cabinet (Cabinet Submissions, Ministerial Briefs and Parliamentary Notes documents). Therefore any related information to this decision is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) i.e. 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. Additional reasoning as per the GIPA Act is provided below.

I have identified in section 4.1 above the public interest considerations in favour of disclosing the requested information. In particular:

1. Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.

2. Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and in particular their policies and practices for dealing with members of the public.

3. Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

Having regard to the nature of the information, I find item 3 above to be a stronger public interest consideration in favour of disclosing the information, because effective oversight of the expenditure of public funds would obviously be assisted.

While I acknowledge the strength of these considerations, particularly number 3, I note that there is considerable publicly available information that enables informed discussion regarding the provision of NSW Government funding to the events namely:

- There is a high degree of commentary and media attention given to each event.
- The involvement and support provided by Destination NSW in the event is highly publicised, and is anything but secret. In my view, discussion of the merits of public funding of the event by Destination

NSW or the NSW Government can and does occur in an informed and sophisticated way without participants needing to know the exact dollar figures involved.
- Disclosure of attendance figures and television ratings.

I have identified the following public interest considerations against disclosure:

Disclosure of the information could reasonably be expected to have the following effects:

1(f) prejudice the effective exercise by an agency of the agency's functions. I have accorded this consideration substantial weight, for the reasons set out above;

1(g) found an action against an agency for breach of confidence. I have accorded this consideration substantial weight, for the reasons set out above;

4(a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market. I have accorded this consideration moderate weight, for the reasons set out above;

4(b) reveal commercial-in-confidence provisions of a government contract. I have accorded this consideration substantial weight, for the reasons set out above; and

4(d) prejudice the commercial, professional and business interests of the event organiser as well as a large number of stakeholders across various industries that depend on the continuing financing arrangements that ensure their interests in the events.

Furthermore, the decision to invest in the Newcastle Supercars event for DNSW is pursuant to a decision of Cabinet (Cabinet Submissions, Ministerial Briefs and Parliamentary Notes documents). Therefore any related information to this decision is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in the GIPA Act as "Cabinet information") - as per schedule 1, clause 2 - 'Information for which there is conclusive presumption of overriding public interest against disclosure' and section 14(1) i.e. 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. Additional reasoning as per the GIPA Act is provided below.

I have taken into account the consideration that an agency of the NSW Government must not act contrary to its legal obligations by breaching a legal obligation of confidence. My assessment of the strength of this consideration was reinforced by the fact that the objection from the third party consulted by Destination NSW was made on the basis of the confidentiality of the requested information.

I have taken into account the other public interest factors pointing against disclosure I have outlined above, including the views of the consulted third party. In so doing I have considered both the risks posed by disclosure described above and the magnitude of the consequences of that disclosure on the NSW economy having regard to the particular event in question and the benefits it brings. I accord those factors significant weight. I also find the objections raised by the consulted third parties to be persuasive.

I have balanced the considerations against disclosure against the factors in favour of disclosure of the particular requested information. In my view the statutory presumption in favour of disclosure and the considerations in favour of disclosure are outweighed by the considerations against disclosure, such that there is an overriding

public interest against disclosure of the requested information. Accordingly, I determine that the requested information should not be disclosed.

5. 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
- external review by the Administrative Decisions Tribunal (ADT).

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 the ADT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (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).

6. Further information

We kindly return your money order for $30.00 for the application fee. Destination NSW will also not be charging you any processing fees for this request.

If you have any questions about this notice or would like any further information, please contact me on 02 9931 1111.

.....

Neville D'Costa
Right to Information Officer

information and privacy commission
new south wales

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