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The Director, Justice Policy

Department of Justice

GPO Box 6

Sydney

NSW,2001

Re: Submission on the review of the Government Information (Public Access) Act 2009 (GIPA Act)

The Local Government Professionals Australia, NSW's Governance Network, (a member network) provides the following submission in relation to the review of the GIPA Act.

Open Access Information

NSW Councils are required to provide its Open Access Information (Schedule 1 of the Regulation) free of charge to members of the public and this includes all information regarding Development Applications whenever they have been created. This requirement causes a large financial burden to councils particularly in relation to Development Applications. Some councils have records dating back 100 years and the Act places no restrictions on the number of requests a person may make or a limit on the volume of files any one person can request. The unreasonable diversion of resources clause in the Act [s53 (5)] only relates to Access Applications and 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 enormous as most of the Development Application Files councils have, are stored in off-site storage facilities and Council must pay retrieval costs to request files as well as organise for the files to be send back to the off-site storage once the files have been viewed. It should be noted that most of these files are in hard copy and the cost involved in scanning all these files is unfeasible and it is very rare to receive multiple requests for the same Development Application at the same time making economies of scale difficult.

As there is no limit on the number of requests a member of the public can make and one council has an example of a member of the public requesting the same Development Application files seventeen times within a 12 month period.

The Governance Network requests that the review consider:-

(a) Including a provision in the Act for unreasonable diversion of resources in relation to requests under the Act for Open Access Information;

(b) Limits on the number of requests a person can make in a year for the same Open Access Information;

(c) The ability to charge if a person requests the same information on multiple occasions; and

(d) 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 fees was introduced in 1989 under the previous Freedom of Information Act. There has been no increase in this statutory fee since 1989. Given, the increased financial burden of storage and retrieval costs outlined above the Governance Network recommend that these fees be increased and provision be included in the Act for agencies to make annual increases of these fees in line with CPI.

Interaction of GIPA and PIPPA Acts

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. PIPPA promotes the protection of personal information and only using information for the purpose it was collected for, whereas GIPA promotes the accessibility of all government information to the public.

Copyright

Section 6(1) of the Act requires councils to make its 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 this applies to 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 GIPA.

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 do not need to provide any documents which are copyright. Given a significant amount of copyright documents are submitted in respect to Development Applications this goes against 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 that was tabled in Federal Parliament on Copyright and the Digital Economy. The report recommends (pg330) that local government be given an exemption to Copyright where a statute requires public access. LG Professionals Australia, NSW request that the Department of Justice make representations to the Australian Government to request that the Copyright Act be amended to include recommendation 15.3 (shown below) of the Australian Law Review Commission report on Copyright and the Digital Economy dated November 2013, 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".

Sincerely,

Paul Bennett

President

Local Government Professionals Australia, NSW