



## Requests pursuant to GIPA Act

**Date :** March 3, 2020

A recent Civil and Administrative Tribunal decision has upheld a local council's decision to refuse an individual's request for documents pursuant to the *Government Information (Public Access) Act 2009* (the GIPA Act).

A resident and ratepayer ("**the applicant**") who resides in the local government area of the Sutherland Shire Council, made a request pursuant to the GIPA Act for documents relating to Council's stormwater management investigation in respect of a stormwater issue on/near the applicant's property, including information on who had directed Council's officers, and who drafted responses on behalf of Council officers. In particular, the applicant sought the following records relevant to this decision:

1. *I request a record of the written report of the 'visit' by the relevant officer/s (ref:8/1/19), CR18-301708 Mr Barber's email 5/12/18, para 3)*
2. *Should no record exist for the 'visit' in Item 7, then I request the record supporting Mr Barber's conclusion: there was no 'problematic overland flow.'*
3. *Should no record exist for Item 9, then I request Mr Sherrie and Mr Barber both be requested to create a record to confirm if either so acted as described in Item 9.*
4. *I request records of the action taken by Mr Barber to ensure his commitment was fulfilled (ref: 29/4/1, CR-15-008526, para 3), '...we will contact you to make a time to inspect your property during a prolonged rainfall event.' (Note heavy rain occurred from 3/6/16-6/6/16 however I was not contacted (ref: my 6/6/16 letter, CR15-008526, specifically paras 3 & 4).*

Council refused the applicant's request on the basis that the information was either already available to the applicant or had already been provided to the applicant, as well as Council not having an obligation to provide information extending to the creation or production of a record of information from information already held by Council pursuant to Section 75(2)(c) of the GIPA Act.

The applicant consequently sought an internal review of the decision, which resulted in several documents being released. The remaining items were not released on the same grounds as the initial decision, plus an additional ground that the information requested was outside the scope of the application.

Following this decision, the applicant applied to the Information Commissioner for an external review of Council's decision, in particular to the requests by the applicant that Council create a record as per his application.

Whilst Section 75(1) of the GIPA Act provides that the Council could make a new record of information, the Tribunal ultimately determined that there is no obligation to create a new record. The language of Section 75(2) was specific and the interpretation was clear that the legislation



provides a discretion for Council to either create a record or decide not to create a new record to capture information, and that the section was consistent with the statutory discretion conferred on Council by the GIPA Act.

Accordingly, the Tribunal held that Council had exercised its discretion to not create a new record, and could see no basis to overturn Council's decision.

The decision can be read in full [here](#).