

[REDACTED]

Email: [REDACTED]

File No: GIPA21/179

Doc No: G21/2387

Dear Ms Maher

GIPA application - Notice of Decision – Information already available

I refer to your access application dated 3 August 2021, under the Government Information Public Access Act 2009 (GIPA Act) for:

- 1. Any peer reviewed scientific reports showing that wearing masks stops the transmission of the Corona virus.*
- 2. Any peer reviewed scientific reports showing that lockdowns stop the transmission of the Corona virus.*
- 3. Any peer reviewed scientific reports that show that border closures stop the transmission of the virus.*
- 4. Any peer reviewed scientific papers or reports or evidence that show the PCR test can detect a "live" infection.*
- 5. Any peer reviewed scientific papers or reports or evidence that show the PCR test can detect what type of RNA virus has been detected.*
- 6. Copies of any directives from the South Australia Department of Health to practitioners about using PCR tests.*
- 7. Copies of any written directives from the South Australia Department of Health to practitioners advising at what amplification the PCR test is to be run at.*
- 8. Copies of all Directives or recommendations from the World Health Organization about the use of the PCR test."*

Your application was received on 5 August 2021.

I am writing to inform you that following a review of your application and from advice provided internally, we advise that the information you are seeking is not information uniquely held by the NSW Ministry of Health, and is information available to you via other means, most of which is publicly available. As such the Ministry of Health has determined that we will not be processing your request, pursuant to sections 58(1)(c) & 59(e) and 59(1)(c), of the GIPA Act.

Please note that information relating to points one to five of your application is information that is available to you, or any other member of the public, by undertaking a literature

review of available peer-reviewed reports in the academic literature available online. This information is not uniquely held by the NSW Ministry of Health and is available for free online by conducting relevant searches, or via paid access to academic websites.

Information relating to points five and six would require an application to the South Australian Department of Health as these questions more closely relates to their affairs.

You can find information about how to apply directly to their agency via the following website:

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/accessing+information/freedom+of+information>

Information relating to point eight of your application is publicly available information on the WHO website. WHO has a comprehensive COVID technical guidance section:

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance>

Publicly Available information

In addition, please find below other publicly available information that may be of interest to you (please note that this list is not an exhaustive list):

- <https://www.nsw.gov.au/covid-19>
- <https://www.pathology.health.nsw.gov.au/covid-19-info/covid-19-testing-information>
- <https://www.health.nsw.gov.au/Infectious/covid-19/communities-of-practice/Pages/clinical-guidance-and-resources.aspx>

Daily media releases and weekly epidemiology reports:

<https://www.health.nsw.gov.au/Infectious/covid-19/Pages/weekly-reports.aspx>

Public Health Laboratory Network's testing guidance:

<https://www.health.gov.au/resources/publications/phln-guidance-on-laboratory-testing-for-sars-cov-2-the-virus-that-causes-covid-19>

For additional information regarding testing practices, you may wish to contact NSW Health Pathology directly to discuss what information they may hold.

Further information is also held on the Commonwealth Department of Health website, including:

<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>

You can find information about how to apply directly to the Commonwealth Health Department for information they hold via the following link:

<https://www.oaic.gov.au/freedom-of-information/>

As the information you are seeking is information that is otherwise available to you, your \$30 GIPA application fee will be refunded to you.

Rights of review

If you do not agree with this decision, you can ask for it to be reviewed. Your review rights are summarised in the enclosed brochure. You have four weeks from the date of this letter to apply for an internal review, or eight weeks to apply for an external review. Your review rights are summarised in the enclosed leaflet.

If you have any questions regarding this matter, please contact the GIPA office via email to MOH-GIPA@health.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "S. Makira". The signature is written in a cursive, flowing style.

Sonia Makira

GIPA Specialist Corporate Governance & Risk Management

Date: 23 August 2021

Encl. Your review rights under the GIPA Act, Nov 2019



Your review rights under the GIPA Act

You can apply for access to information and NSW government agencies will make a decision under the *Government Information (Public Access) Act 2009* (GIPA). If you are dissatisfied with the decision you can request a review.

What decisions can be reviewed?

You have the right to request a review of certain decisions¹ made by government agencies about the release of information under the 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**² after the notice of a decision has been given to you, to ask for an internal review by the agency that made the decision. An agency may accept an application for internal review out of time, but is not obliged to do so.³

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review⁴, but you can ask for an external review (see below).

Similarly, if the access applicant or one of any number of third parties has sought an internal review of the decision that you are not satisfied with, you are not entitled to seek an internal review of the decision.⁵ You are however able to seek an external review.

The review must be carried out by an officer who is no less senior than the person who made the original decision.⁶ The review decision must be made as if it was a fresh application.⁷

There is a \$40 fee for an internal review application.⁸ An agency may choose to waive the internal review fee.⁹ No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time¹⁰ or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under

¹ Section 80 GIPA Act

² Section 83(1) GIPA Act

³ Section 83(2) GIPA Act

⁴ Section 82(2) GIPA Act

⁵ Section 88 GIPA Act

⁶ Section 84(2) GIPA Act

⁷ Section 84(1) GIPA Act

⁸ Section 85(1) GIPA Act

⁹ Section 127 GIPA Act

¹⁰ Section 85(2) GIPA Act

section 93 of the GIPA Act.¹¹ In this case, you cannot be charged a review fee.

The agency must acknowledge your internal review application within **five** working days of receiving it.¹² The agency must decide the internal review within **15** working days¹³ (this can be extended by **10** working days if the agency has to consult with a third party not previously consulted¹⁴, or by agreement with you¹⁵).

Note: You cannot ask for internal review of a decision that is being or has already been reviewed by the Information Commissioner¹⁶ or the NSW Civil and Administrative Tribunal (NCAT)¹⁷. This does not apply if the internal review was recommended by the Information Commissioner under section 93.

What is a working day?

A working day is defined as any day that is not a Saturday, Sunday, public holiday or any day during the period declared by the Premier as the Christmas closedown period.¹⁸

What does notice 'given to' mean?

In the decision of *Choi v University of Technology Sydney* [2017] NSWCATAD 198, the NCAT considered when notice of a decision could be considered to have been 'given to' an access applicant, for the purposes of calculating the time period to seek a review.

NCAT gave the following guidance, in the circumstances where the applicant was emailed a notice of decision as an attachment:

- the words 'given to' have their ordinary meaning of 'delivered' or 'handed over' (at [23], citing *Melville v Townsville City Council* [2004] 1 Qd R 530 at [27])
- in the case of notification by email, notice was given when the decision was emailed to an applicant (at [23])

In the case of notification by post, notice is given at the time when the notice is posted by the Agency.¹⁹ Once the posting of the notice to the postal address is completed, notice is considered to have been given by the agency.

¹¹ Section 93(6) GIPA Act

¹² Section 83(3) GIPA Act

¹³ Section 86(1) GIPA Act

¹⁴ Section 86(2) GIPA Act; IPC Fact Sheet [Why consult third parties; Guideline 5 Consultation on the public interest considerations](#)

¹⁵ Section 86(4) GIPA Act

¹⁶ Section 82(4) GIPA Act

¹⁷ Section 82(5) GIPA Act

¹⁸ Clause 1, Schedule 4 to the GIPA Act

¹⁹ Section 126 (2) GIPA Act

Calculating time then commences on the first working day after the notice is posted.²⁰

- it was not necessary for the applicant to have read or been aware of the contents of a decision for it to have been 'given to' them (at [23]).

2. External review by the Information Commissioner

If you disagree with any of the decisions listed above, you can ask for an external 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.²¹

However, if you are not the access applicant, you **must** seek an internal review before applying for review by the Information Commissioner, unless an internal review is not available to you²² (see Option 1 above; internal review is not available if a Minister or their personal staff, or the principal officer of an agency made the decision, if the decision has already been internally reviewed by the agency or if the decision is being or has been reviewed by NCAT).

You have **40 working days**²³ from being given the decision to ask for a review by the Information Commissioner.

There is no provision in the GIPA Act that permits the Information Commissioner to accept applications out of time.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency. This may include a recommendation that the agency reconsider and make a new decision on the access application.²⁴ This enables the agency to make a new decision, whether or not the decision has already been the subject of internal review by the agency.²⁵

The Information Commissioner has 40 working days from the day on which all necessary information relating to a review application has been received to complete the review of a decision and make any recommendations.²⁶

²⁰ *ANQ v Department of Attorney General and Justice, Corrective Services* [2012] NSWADT 271 at [8]- [11]

²¹ Section 89(2)(a) GIPA Act

²² Section 89(2)(b) GIPA Act

²³ Section 90 GIPA Act

²⁴ Section 93(1) GIPA Act

²⁵ Section 93(2) GIPA Act

²⁶ Section 92A(1) GIPA Act

The Information Commissioner and applicant can agree to an extension of the timeframe. The Information Commissioner will notify the agency of any extension.²⁷

If the Information Commissioner does not complete the review within the 40 working day period, the Information Commissioner is deemed to have made no recommendations to the agency.²⁸ The effect of this is that the original decision stands and the only option available to the applicant is to seek a review by NCAT. The applicant must be notified when the review is completed and advised of any recommendations made by the Information Commissioner.²⁹

Note: You cannot ask the Information Commissioner to review a decision that is being or has already been reviewed by NCAT³⁰.

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.

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 NCAT to review it. However, if you are not the original access applicant (i.e. you are a third party), you must seek an internal review before applying for review by NCAT, unless an internal review is not available to you³¹ (see Option 1 above; internal review is not available if a Minister or their personal staff, or the principal officer of an agency made the decision, if the decision has already been internally reviewed by the agency or if the decision is being or has been reviewed by the Information Commissioner).

You do not have to have the decision reviewed by the Information Commissioner before applying for review by NCAT.³²

You have **40 working days**³³ from being given the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days**³⁴ from being notified of the Information Commissioner'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

²⁷ Section 92A(2) GIPA Act

²⁸ Section 92A(3) GIPA Act

²⁹ Section 92A(4) GIPA Act

³⁰ Section 98 GIPA Act

³¹ Section 100(2) GIPA Act

³² Section 100 GIPA Act

³³ Section 101(1) GIPA Act

³⁴ Section 101(2) GIPA Act