



8 December 2022

Our ref: GIPA22 [REDACTED]

Dear [REDACTED]

Formal Access Application - Notice of Decision

I refer to your Formal Access Application under the *Government Information (Public Access) Act 2009* (the GIPA Act), that you lodged with the Department of Communities and Justice (the Department) on 26 August 2022, where you requested access to the following information:

“1. The number of parentage orders made in the Supreme Court of NSW under the Surrogacy Act 2010 for the years 2017, 2018, 2019, 2020 and 2021. If these are reported on a financial year basis, then the statistics on that financial year basis.”

Access decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

The information requested in your access application is not information that is contained in a record that the department already holds. However, I have taken into consideration section 75 of the GIPA Act, which provides that although there is no obligation to provide access to government information by way of creating a new record or document, an agency is not prevented in doing so.

Therefore, I have used my discretion on this occasion to create a new record pursuant to section 75 of the GIPA Act to respond your access application and have decided under section 58(1)(a) of the GIPA Act, to provide access to the information sought in your access application.

The information has been provided to you at the end of this notice and is titled ‘Attachment A’.

This decision is reviewable under section 80(d) of the GIPA Act.

Searches conducted

In processing your application, I have taken into account the obligations referred to in section 53 of the GIPA Act, which states:

“53 Searches for information held by agency

(1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency’s searches must be conducted using the most efficient means reasonably available to the agency.

(3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

(4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the [State Records Act 1998](#) or contrary to the agency’s established record management procedures.

(5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency’s resources.”

In accordance with the obligations outlined above, the Supreme Court of NSW conducted searches of Supreme Court records and databases including JusticeLink and provided the information that is contained in the document enclosed with this notice titled ‘**Attachment A**’.

The public interest test

The Applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information (section 9(1) of the GIPA Act). The public interest balancing test for determining whether there is an overriding public interest against disclosure is set out in section 13 of the GIPA Act.

The general public interest consideration in favour of access to government information set out in section 12 of the GIPA Act means that this balance is always weighted in favour of disclosure. Section 5 of the GIPA Act establishes a presumption in favour of disclosure of government information.

Before deciding whether to release or withhold information, the Department must apply the public interest test and decide whether or not an overriding public interest against disclosure exists for the information.

I have made my decision in accordance with section 13 of the GIPA Act by:

- a. identifying relevant public interest considerations in favour of disclosure
- b. identifying relevant public interest considerations against disclosure
- c. attributing weight to each consideration for and against disclosure
- d. determining whether the balance of the public interest lies in favour of or against disclosure of the government information.

I have applied the public interest test in accordance with the principles set out in section 15 of the GIPA Act which are:

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

Public interest considerations in favour of disclosure

Section 12(1) of the GIPA Act sets out a general public interest in favour of disclosing government information, which must always be weighed in the application of the public interest test. The Department may take into account any other considerations in favour of disclosure which may be relevant (s12(2) GIPA Act).

In my view the following public interest considerations in favour of disclosure apply when considering the documents in issue:

- a. The statutory presumption in favour of the disclosure of government information.
- b. The general right of the public to have access to government information held by agencies.
- c. 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.
- d. 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.

Personal factors of the application

I can also take into account any personal factors of your application under section 55 of the GIPA Act. I have not identified any personal factors relevant to your application.

Public interest considerations against disclosure

The only public interest considerations against disclosure that can be considered are those in schedule 1 and section 14 of the GIPA Act. However, in this notice of decision, the Department has not identified any public interest considerations against disclosure of the information you requested.

After reviewing the information and exercising the public interest test, I have decided to fully disclose the information that falls under point 1 of the scope of your access application in accordance with section 58(1)(a) of the GIPA Act.

Disclosure Log

I have assessed that the information released in response to your formal access application is information that would be of interest to other members of the public and is suitable to be recorded in the disclosure log. The Department will record certain details about your application (excluding your personal information) in its 'disclosure log' (under sections 25 and 26 of the GIPA Act), which is available on our website.

Review rights

If you disagree with any of the decisions in this notice, you may seek a review under Part 5 of the GIPA Act.

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 NSW Civil and Administrative Tribunal (NCAT).

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 NCAT.

If you have any questions about this decision please contact me at juliet.butterworth@dcj.nsw.gov.au.

Yours sincerely

Juliet Butterworth

Juliet Butterworth
OGIP Advisor
Open Government, Information and Privacy
Department of Communities and Justice

Attachment A

Year	Number of orders made
2017	9
2018	14
2019	0
2020	12
2021	1