



CASE SUMMARY – CURTIS V PENRITH CITY COUNCIL [2026] NSWCATAD 36

BACKGROUND

This matter concerned a GIPA application made to Penrith City Council seeking access to all information regarding complaints about electoral signage displayed on a trailer, which had led to a \$3,000 fine being issued. The applicant also sought confirmation as to whether a named Councillor had been fined the same amount.

The requested information related to enforcement action taken against a person connected to the applicant during the 2024 local government election campaign, when the applicant was running as a candidate.

Council's original decision provided access to some information and refused access to other information, but did not give reasons. Following review by the Information and Privacy Commission, Council conducted an internal review and again provided access to some documents while refusing access to others, including 21 documents said to be subject to legal professional privilege. Council also maintained a processing charge of \$120 and refused to reduce that charge.

The applicant sought administrative review in NCAT, challenging the refusal of access to the documents over which privilege was claimed and the refusal to reduce the processing charge.

KEY FINDINGS

Legal professional privilege will attract a conclusive presumption against disclosure - The Tribunal confirmed that where information would be privileged from production in legal proceedings on the ground of legal professional privilege, Schedule 1 clause 5 of the GIPA Act applies. In those circumstances, there is a conclusive presumption that there is an overriding public interest against disclosure, unless privilege has been waived. The Tribunal accepted that legal professional privilege can apply to advice given by in-house lawyers employed by a council, provided there is a genuine lawyer-client relationship and the lawyer is acting in a professional legal capacity.

The dominant purpose of the communication remains critical - The Tribunal emphasised that privilege does not attach to every communication involving a lawyer. The communication or document must have been brought into existence for the dominant purpose of seeking or providing legal advice, or for legal services relating to litigation.

Misconduct allegations do not displace privilege without evidence - The applicant argued that the documents should be disclosed because they would expose misconduct or misuse of power. The Tribunal rejected that submission, holding that allegations of misconduct do not remove privilege unless there is evidence capable of engaging section 125 of the Evidence Act. No such basis was established here.

A processing charge may still be reasonable even if partially reduced - The Tribunal accepted that a four-hour processing charge for dealing with 206 pages of material was reasonable, including time spent retrieving documents, reviewing them, applying the public interest test and preparing redactions and the decision. However, it also found that the information sought was of special benefit to the public generally because it concerned Council enforcement action during an election campaign, which was a distinct public context. The applicant was therefore entitled to a 50% reduction in the processing charge.

KEY TAKEAWAY

This judgment confirms that legal professional privilege remains a powerful basis for refusing access under the GIPA Act, including for advice provided by in-house council lawyers, but only where the communication is truly confidential and created for the dominant purpose of legal advice. It also shows that not every document caught up in a legal advice chain will be privileged, and that information connected to council decision-making during an election campaign may justify a reduced processing charge because of its special public benefit.