



CASE SUMMARY – EFREMOV V NSW HEALTH ADMINISTRATION CORPORATION [2026] NSWCATAD 37

BACKGROUND

The applicant sought access under the GIPA Act to all correspondence, minutes and communications relating to his formal complaints to NSW Health Pathology about alleged medical negligence in Lyme disease testing. The respondent refused to deal with the application under s 60(1)(a) of the Government Information (Public Access) Act 2009 on the basis that processing it would require an unreasonable and substantial diversion of its resources. The Tribunal was required to determine whether that refusal was the correct and preferable decision.

KEY FINDINGS

The assessment is contextual, not just numerical - The Tribunal confirmed that whether a request would require an unreasonable and substantial diversion of resources is not determined simply by counting the estimated hours needed to process it. The question must be assessed in the context of the particular agency, including its structure, available staff, and the work those staff ordinarily perform.

Agency size is relevant, but not decisive - Although the respondent was a large agency overall, the Tribunal accepted that only a limited subset of staff had the knowledge and access needed to search for the requested information. The fact that an agency has substantial overall resources does not mean every request can be readily absorbed without operational consequences.

The identity of the staff required matters - The Tribunal gave weight to the fact that the relevant searches would need to be undertaken by specialist laboratory staff and a right to information officer with limited GIPA capacity, rather than by a large general records team. The practical question was not just how long the request would take, but who within the agency would need to do the work and what other duties they would be diverted from.

Impact on core functions is a key part of the analysis - The Tribunal accepted that diverting specialist pathology staff from their normal testing, reporting and reagent production duties could negatively affect the respondent's service delivery. This supported the conclusion that the diversion of resources was unreasonable in the circumstances.

There is no fixed hourly threshold - The Tribunal reiterated that there is no "40-hour rule" or other fixed numerical benchmark for when a request becomes too burdensome. A request must be assessed on its own facts, and even a request estimated at fewer than 40 hours may still amount to an unreasonable and substantial diversion depending on the agency's operational context.

Related applications can be considered together - The Tribunal found that the access application was related to the applicant's other GIPA applications concerning Lyme disease testing and complaints, including two other applications made on the same day. It gave considerable weight to the cumulative burden created by those related requests when assessing the overall diversion of resources.

PRACTICAL LESSONS

- "Unreasonable diversion" is not just about hours — it's about who has to do the work and what they would be pulled away from.
- A large agency can still refuse a request if only a small number of specialised staff can actually access the information.
- The real question is operational impact: if responding to a GIPA request disrupts core services, refusal may be justified.