LEVEL 57, 25 MARTIN PLACE, SYDNEY NSW 2000
+61 (02) 9238 2191
URBANLEGAL.COM.AU

CASE SUMMARY – IRVINE V TEMORA SHIRE COUNCIL [2026] NSWCATAD 43

BACKGROUND

This matter concerned a GIPA application made by Temora Shire Councillor Anthony Irvine seeking access to a deed of separation between the Council and its former General Manager.

Council initially refused access to the deed in 2023. The decision was reviewed by the Information Commissioner, and the matter was later remitted by NCAT for reconsideration. Following reconsideration, Council released a partially redacted version of the document, maintaining that some information should remain withheld due to public interest considerations, including privacy.

Mr Irvine continued to seek further disclosure of the redacted material. In April 2025, Council refused to deal with the new access application under sections 58(1)(e) and 60(1)(b) of the *Government Information (Public Access) Act 2009*, on the basis that the same information had already been the subject of previous access decisions and there were no reasonable grounds for believing that Council would make a different decision. Mr Irvine sought administrative review of that refusal in NCAT.

KEY FINDINGS

Refusing to deal with repeat applications is permitted under the GIPA Act - The Tribunal confirmed that an agency may refuse to deal with a GIPA access application where the applicant has previously made an application for the same or substantially the same information and there are no reasonable grounds for believing the agency would make a different decision. The provision is intended to prevent repeated applications where the issue has already been considered.

The Tribunal does not reconsider the merits of disclosure in these circumstances - Where an agency relies on section 60(1)(b) to refuse to deal with an application, the Tribunal's task is to determine whether there are reasonable grounds to believe the agency might reach a different decision if it reconsidered the request.

Previous access decisions may justify refusal to deal with a new application - The Tribunal accepted that Council had already made multiple decisions regarding access to the same deed and had repeatedly considered the relevant public interest factors for and against disclosure. The threshold for refusing to deal with the application was satisfied.

The applicant must show a realistic basis for a different decision - The applicant's argument that earlier reconsiderations had progressively reduced redactions did not establish a reasonable basis for believing that the remaining information would now be disclosed.

Privacy considerations supported the likelihood that the decision would remain the same - Council relied on privacy considerations under the *Privacy and Personal Information Protection Act 1998*, noting that disclosure of the remaining information could reveal personal information relating to the former General Manager. The Tribunal accepted that these considerations reinforced the likelihood that Council would maintain its previous position.

Councillor access rights outside GIPA were relevant context - The Tribunal also noted that Mr Irvine, as a Councillor, had been offered access to the document through Council processes subject to confidentiality obligations under the Local Government Act and the Council's Code of Conduct. This reduced the need for access through the GIPA framework.

PRACTICAL LESSONS

- Agencies may rely on section 60(1)(b) of the GIPA Act to refuse to deal with repeat access applications where the same information has already been considered.
- In reviewing such decisions, NCAT does not re-determine the public interest test for disclosure.
- The relevant question is whether there are reasonable grounds to believe the agency might make a different decision, not whether the previous decision was correct.