



CASE SUMMARY – SANDERCOCK V THE HILLS SHIRE COUNCIL [2026] NSWCATAD 191

BACKGROUND

This case concerned two Government Information (Public Access) Act 2009 (NSW) (GIPA Act) applications seeking access to correspondence between The Hills Shire Council and representatives of the Eastwood Rugby Club regarding the proposed use of part of Fred Caterson Reserve.

The requests ultimately resulted in Council searching more than 27,000 emails before identifying the documents within scope.

Council released most of the requested information but withheld a small number of documents, relying on legal professional privilege, commercial confidentiality and other public interest considerations against disclosure. To manage the volume of material, it engaged KordaMentha to undertake technology-assisted review before manually assessing the remaining documents. The applicant challenged the decision in NCAT, arguing that further documents should have been released, Council's searches were inadequate, and its handling of the GIPA requests revealed systemic failures warranting referral to the Information Commissioner.

KEY FINDINGS

1. **Legal professional privilege remains a complete answer to disclosure** - The Tribunal confirmed that communications between Council and its solicitors, including draft documents provided for the purpose of obtaining legal advice, attracted legal professional privilege. Because privileged documents fall within Schedule 1 of the GIPA Act, there is a conclusive presumption against disclosure unless privilege has been waived. No public interest balancing exercise is required.
2. **"Commercial-in-confidence" does not automatically prevent disclosure** - Unlike legal professional privilege, commercial confidentiality does not create an automatic exemption. The Tribunal considered whether disclosure could reasonably be expected to prejudice Council's ability to carry out its functions, prejudice legitimate commercial interests, and undermine confidential commercial negotiations. On the facts, the Tribunal accepted that ongoing negotiations regarding the proposed licence justified maintaining confidentiality.
3. **Extensive searches can satisfy the GIPA Act** - Council searched more than 27,000 emails, engaged an external technology provider to filter and categorise records, and then manually reviewed the remaining documents. The Tribunal held that this constituted reasonable searches for the purposes of the GIPA Act and accepted that engaging an external provider was an appropriate and efficient means of managing a large-scale request.
4. **Agencies must justify confidentiality—not simply assert it** - The Tribunal reiterated that an agency bears the onus of establishing why public interest considerations against disclosure apply. General assertions that documents are confidential will not be sufficient. Agencies must demonstrate how disclosure could reasonably prejudice negotiations, commercial interests or the effective exercise of their functions.

KEY TAKEAWAYS

1. Legal professional privilege remains one of the strongest protections available under the GIPA Act. If privilege applies and has not been waived, disclosure will generally be refused.
2. Commercial confidentiality is not a blanket exemption. Councils must identify the specific prejudice that disclosure would cause and demonstrate why those public interest considerations outweigh disclosure.
3. Large or complex GIPA requests can justify technology-assisted review. Using external providers to search and filter documents is permissible where it assists agencies to undertake reasonable searches efficiently.
4. A well-documented search process matters. Agencies should be able to explain how searches were conducted, what search terms were used, how documents were reviewed and why information was withheld.
5. The starting point under the GIPA Act remains transparency. Confidentiality is the exception, and agencies bear the onus of justifying why information should not be released.