



Guide for applicants on unreasonable and substantial diversion of resources

This fact sheet is designed to assist citizens where an agency has advised that the scope of the access application is too broad under the *Government Information (Public Access) Act 2009* (GIPA Act).

An agency may refuse to deal with an access application because it asks for too many documents or too much information, and to respond to this application would require an unreasonable and substantial diversion of resources.¹ However, before the agency can refuse to deal with an application there is a requirement under the GIPA Act to contact the applicant to provide notice that the application is too broad, and allow the applicant an opportunity to amend the application.²

An agency has advised my access application is asking for too much information

When an agency receives your access application and confirms it is a valid application, the agency will make an initial assessment as to how much information you are requesting.

If the agency assesses that the scope of your application is too broad they will contact you advising that dealing with your application would require an unreasonable and substantial diversion of resources³ and that they are considering refusing to deal further with your access application.

Before the agency makes a decision to refuse to deal with your application further, the agency will provide you with an opportunity to amend your application.⁴

At this point the agency has given you notice, but not made a decision on refusing to deal with

your access application. This first notice does not provide you with review rights, as these rights are only available to you once the agency has made the decision to refuse to deal with your access application.

Does the time period for deciding an access application continue when the agency has advised my access application is asking for too much information?

No. When you have received a notice from the agency that your access application is too broad, the time period required for deciding your application⁵ will stop⁶ while you are given an opportunity to amend the application.

What does the agency take into account or consider when considering my application may be an unreasonable and substantial diversion of resources?

The agency might take into account or consider a number of factors in assessing what may be an unreasonable and substantial diversion of resources including:

- the estimated volume of the information that may be captured by your request
- the size of the agency and the resources available to the agency to manage your application
- the time limit in the GIPA Act for the agency to make a decision.⁷

Where the agency considers that any of these factors apply, they must also consider:

- the general public interest in favour of the disclosure of government information, and

¹ GIPA Act section 60(1)(a)

² GIPA Act section 60(4)

³ GIPA Act section 60(1)(a)

⁴ GIPA Act section 60(4)

⁵ GIPA Act section 57

⁶ GIPA Act section 60(4)

⁷ GIPA Act section 60(3A)

- the demonstrable importance of the information to the applicant, including whether the information:
 - is personal information that relates to the applicant, or
 - could assist the applicant in exercising any rights under any Act or law.⁸

These are not the only matters that an agency may consider or take into account when assessing the scope of your application.

An agency can only refuse to deal with your application when:

the factors supporting their assessment that dealing with the application would require a substantial and unreasonable diversion of resources, outweigh the factors in favour of disclosure, or the importance of the information to you.

What should I consider if I am thinking about amending my application?

The agency may make suggestions to you about the potential ways you may amend your application. Options you may wish to consider include:

- Limiting your request for information to a time frame such as by date range or number of years
- Limiting your request to a part of the overall information you are seeking
- Limiting the number of individuals named in your request for example, emails between two people rather than any emails
- Excluding information that you already have received from the agency or information you have sent to the agency
- Confirming that you are not seeking the personal information of others
- Providing the agency with details including file reference numbers
- Providing clear and specific details about the information you are seeking
- Explaining why the information is important to you.

Can I amend my application to ask for more information?

You can amend an application at any time before the agency decides the application.

You must give notice to the agency that you are amending the application before the agency has decided your application.⁹

If you are amending your application to ask for more information, you need the consent of the agency.¹⁰

What if I don't want to amend my application?

Even when you may not want to amend your application it is suggested that you talk to the agency to discuss this.

If you then decide that you do not wish to amend or narrow your request for information you should advise the agency that you are maintaining your original request for information.

It is likely that the agency would then make a decision to refuse to deal with your access application on the grounds that to do so would require an unreasonable and substantial diversion of the agency's resources. The agency will provide you with a written notice of their decision.

Will the agency provide me with reasons in its notice of decision that it is refusing to deal with my access application?

Yes. The agency is required in its notice of decision to refuse to deal with an access application to give reasons for the refusal.¹¹

Am I able to have my application fee refunded?

No. If the agency has refused to deal with your access application you are not entitled to the refund of the application fee because of an unreasonable and substantial diversion of resources.¹²

⁸ GIPA Act section 60(3B)

⁹ GIPA Act section 49(1)

¹⁰ GIPA Act section 49(2)

¹¹ GIPA Act section 60(5)

¹² GIPA Act section 60(6)

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

Can I seek a review if the agency refuses my application on the grounds that it would require an unreasonable and substantial diversion of resources?

Yes. If the agency has decided to refuse to deal with your access application because dealing with it would require an unreasonable and substantial diversion of the agency's resources,¹³ the agency has made a reviewable decision.¹⁴

Guidance regarding your review rights can be found on the IPC website under Information Access Resources for Public Sector agencies.

For more information contact:

Information and Privacy Commission NSW (IPC)

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au

NSW Civil and Administrative NCAT (NCAT)

Telephone: 1300 00 NCAT or 1300 006 228
and follow the prompts
Website: www.ncat.nsw.gov.au
Interpreter Service (TIS): 13 14 50
National Relay Service for TTY Users: 13 36 77

¹³ GIPA Act section 60(1)(a)

¹⁴ GIPA Act section 80 (c); IPC Fact Sheet: *Your review rights under the GIPA Act*