

**NOTICE OF DECISION
(s. 58 of the GIPA Act)**

Applicant:	Harriett Swift, Bega Environment Network
File Ref:	GIPA2014-11
Decision-maker:	Joanna Bodley, Manager Communications and Media
Date of decision:	8 January 2014

Summary of access application

On the 24 November 2014 the Forestry Corporation of NSW received your valid access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, in which you sought access to the following:

- note: if you do not provide enough detail we may refuse to process your application.
- Req 2014 Logging of Glenbog State Forest, Cpts 2301, 11, 21*
- ① Any emails, letters, file notes between Forestry Corp & the logging contractor relating to the protection of wombats
 - ② Any emails, letters, file notes between Forestry Corp and South East Fibre Exports Pty Ltd. relating to the protection of wombats in logging.
 - ③ Any documents relating to any decision to vary the Net Harvest Area from the Estimated Harvest Area as set out in the original Harvest Plan.
 - ④ A List of all logging operations undertaken by this contractor in 2013/2014.
- p 1 Access Application Form
Community and Government Relations

Processing of application

Under the *GIPA Act*, agencies must conduct reasonable searches for government information requested in an access application. In certain circumstances, they must also consult third persons to see whether they object to the information sought being released.

Searches for requested information were undertaken by the Hardwood Forests Production – South section within the Corporation. All information located as a result of this search is listed in the attached schedule of documents.

Under s. 54 of the *GIPA Act* third party consultation was required and two objections regarding the release of requested information have been received.

Decision to provide access

I am authorised by the principal officer, for the purposes of s. 9(3) of the *GIPA Act*, to decide your access application.

The Operation of the Government Information (Public Access) Act 2009

Under s. 9(1) of the *GIPA Act*, you have a legally enforceable right to be provided with access to the information sought, unless there is an overriding public interest against disclosure of the information.

Under s. 5 of the GIPA Act, there is a presumption in favour of the disclosure of government information to which you seek unless there is an overriding public interest against disclosure.

In making my decision, I am required to apply the public interest test under s. 13 of the GIPA Act, which provides that there will only be an overriding public interest against disclosure where public interest considerations in favour of disclosure are on balance, outweighed by those against disclosure.

The public interest test requires a three-step process:

- i. identifying public interest in favour of disclosure;
- ii. identifying public interest against disclosure; and
- iii. determining where the balance lies

Public Interest In favour of Disclosure

The applicant claimed that there has been public and media interest in the logging operation in Glenbog State forest and the welfare of wombats as a result of that operation. On a broader note the applicant noted that the public has a right to know about contentious issues related to the management of public assets.

Public Interest against Disclosure

The two third parties consulted on the release of this information both made objections to its release.

Party 1 objected to the release of information contained in the documents which was not relevant to the specific request and to the release of personal information related to its staff included in the documents. This relates to document 5.

Party 2 objected to the release of information contained in the documents which was not relevant to the specific request and to the release of its name or any personal information related to its staff. This objection was made citing that release would prejudice its legitimate business, commercial, professional or financial interests. The objection provided links to social media and online campaigns Party 2 believes provide false and misleading information about the operation's activities. Party 2 claimed that information identifying it would be used to target its business operations with direct protest action thereby prejudice the legitimate business, commercial, professional and financial interests of their business. These objections related to documents 2, 8 and 3. Party 2 also objected to the creation of Document 4 to satisfy this request for information claiming that the GIPA Act applies only to existing documents and that summaries should not be created.

Decision on All Documents

Section 14 (2) of the GIPA Act outlines the public interest considerations that may be considered against disclosure. The disclosure of personal information is one of these and as such, identifying details and names have been redacted from the documents released. This relates to document 5.

Taking consideration of the objections raised by both parties and to enable the information requested by the applicant to be released, information not relevant to the request has been redacted from the documents or an extract of the document provided to satisfy the specifics of the request for information. This relates to documents 3, 5, 6 and 8.

In weighing up the public interest considerations, the objection by Party 2 to release of its name or identifying personal information of its staff has been upheld as release is considered likely to lead to the prejudice of legitimate business, commercial, professional or financial interests. As such, those details have been redacted from relevant documents. This relates to documents 2, 3 and 8.

The objection by Party 2 to the creation of document 4 has not been upheld. Section 75 of the GIPA Act does not preclude the agency from creating a new record to satisfy a request for

information. It also does not require the agency to create a new record. Given that the information requested is relatively easily retrievable by Forestry Corporation and the creation of the record to satisfy the request was not an unnecessary impost on the business, Document 4 was created. In weighing the public interest considerations the document is endorsed for release.

Form of Access

Parties have **four weeks** from the date of this letter to apply for an internal review, and **eight weeks** to apply for an external review. Whilst those review rights are pending, I am not permitted to provide you with access to Document 4 so that the third party rights to request an internal review of this aspect of the Decision can be exercised.

This decision is reviewable under s. 80 of the *GIPA Act*.

Disclosure log

If information is released under a formal access application that would be of interest to other members of the public, an agency must record certain details about the application in its 'disclosure log' (under ss. 25 and 26 of the *GIPA Act*).

Please be advised that I have decided that this information could be of interest to other members of the public and certain details will be recorded in the disclosure log for the Department of Trade & Investment. Those details to be included are;

- Date application was decided,
- Description and amount of information provided,
- Details of how this information can be accessed.

This decision is reviewable under s. 80 of the *GIPA Act*.

Your rights of review

If you are aggrieved by any of the reviewable decisions in this Notice of Decision, you may seek a review under Part 5 of the *GIPA Act*. See the attached fact sheet for information on your review rights.

If you have any queries about this notice or require further information on your rights of review, please contact me on 9872 0105 or by email at joanna.bodley@fcnsw.com.au



Joanna Bodley
Manager Communications and Media

Schedule of Documents GIPA2014-11dan

Doc No.	Description of record	Format of Record Provided	Public interest(s) against disclosure	Document Released Yes / No / Partial
1.	Harvest Plan Briefing Form	PDF	Nil	Y
2.	Harvest Plan Briefing Sign Off	PDF	S14 Table 4 (d)	P
3.	Harvest Plan SFO Notes	PDF	S14 Table 4 (d)	P
4.	List of operations undertaken by contractor	PDF	Nil	Y
5.	Extract from Southern Region (Eden MA) – Hardwood Industry Meeting Minutes	PDF	S14 Table 3 (a)	P
6.	File note re change to harvest area	PDF	S14 Table 3 (a)	P
7.	Harvest Plan Operational Map	PDF	Nil	Y
8.	File notes Daniel Tuan – Senior Manager Production South	PDF	S14 Table 4 (d)	P