

AUSTRALIA / JUDGMENT

Adams v Hornsby Shire Council

[2026] NSWCATAD 296**COURT**

Civil and Administrative Tribunal

DECIDED

28 September 2026

BEFORE

E A MacIntyre, Senior Member

CASE / FILE NUMBER

2026/00181934

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Adams v Hornsby Shire Council [2026] NSWCATAD 296**Hearing dates:** 17 August 2026**Date of orders:** 28 September 2026**Decision date:** 28 September 2026**Jurisdiction:** Administrative and Equal Opportunity Division**Before:** E A MacIntyre, Senior Member**Decision:** (1) The administratively reviewable decision of the Respondent is set aside.
(2) The administratively reviewable decision of the Respondent is remitted for reconsideration by the Respondent.**Catchwords:** ADMINISTRATIVE LAW - administrative review - government information - access application - enforceable right to access government information - - reasonable searches
ADMINISTRATIVE LAW - reviewable decision - correct and preferable decision - Civil and Administrative Tribunal**Legislation Cited:** Administrative Decisions Review Act 1997 (NSW)
Civil and Administrative Tribunal Act 2013 (NSW)
Government Information (Public Access) Act 2009 (NSW)**Cases Cited:** CLT v Secretary, Department of Education [2022] NSWCATAD 34
Klaric v Commissioner of Police [2020] NSWCATAP 153
Lonsdale v University of Sydney [2015] NSWCATAP 277
McNeill v Clarence Valley Council [2025] NSWCATAP 184
Shvetsova v University of New England [2015] NSWCATAD 49
Wojciechowska v Commissioner of Police [2020] NSWCATAP 173
Wojciechowska v Commissioner of Police (No 2) [2020] NSWCATAP 257

Texts Cited:	None cited
Category:	Principal judgment
Parties:	Charlie Armstrong Adams (Applicant) Hornsby Shire Council (Respondent)
Representation:	Applicant (Self-Represented) Matthews Folbigg (Respondent)
File Number(s):	2026/00181934
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REASONS FOR DECISION

Charlie Armstrong Adams, the applicant in these proceedings (“Applicant”) seeks review of a decision made by Hornsby Shire Council (“Respondent”) that they did not hold certain information under the Government Information (Public Access) Act 2009 (NSW) (“GIPA Act”).

The Respondent said that reasonable searches had been carried out and that following those searches, they had provided to the Applicant the information they had within the scope of his access application. The Applicant disputed this.

Background

On 1 February 2026, the Applicant attended Hornsby Library during the afternoon in order to access the services of a Justice of the Peace.

The Applicant said that he had experienced delays in obtaining the service he sought. He said he was also told that there were limits on the number of pages a Justice of the Peace could witness and that the person serving could not witness his documents because her service time had ended.

The Applicant made a complaint by email concerning the conduct of library staff and the handling of the Justice of the Peace service on 1 February 2026 at approximately 4:00 PM.

The Respondent for their part said that the person the Applicant dealt with was a volunteer and that she “felt distressed after her interaction” with the Applicant.

The Applicant on 23 February 2026, made an application seeking access to certain information under the GIPA Act. What he sought was information in relation to the handling of the service at Hornsby Library for accessing Justices of the Peace on 1 February 2026 between approximately 3:30 PM and 4:30 PM and the conduct of library staff during that period.

By decision dated 27 March 2026, the Respondent determined the Applicant's access application and released certain information to him, subject to redactions. The decision also was that certain other information did not exist, including internal communications, reports, internal notes or staff records between library staff and the Respondent's officers concerning the Applicant's attendance at Hornsby library on 1 February 2026 in connection with the Justice of the Peace service.

The Applicant sought administrative review by the Civil and Administrative Tribunal ("Tribunal") of the Respondent's decision, by application made on 4 May 2026.

Applicant's right to information

The GIPA Act gives members of the public an enforceable right to access government information, subject to the provisions of that Act. That right is given for the stated object of maintaining and advancing "a system of responsible and representative democratic Government that is open, accountable, fair and effective" (s 3(1)(b) of the GIPA Act).

A person who makes an access application for government information has a "legally enforceable right to be provided with access to the information" (s 9(1) of the GIPA Act). Access applications are to be dealt with in accordance with Part 4 of the GIPA Act.

An agency may determine an access application under the GIPA Act in a number of ways, as relevantly set out in s 58(1) including:

"(a) deciding to provide access to the information, or

(b) deciding that the information is not held by the agency."

There is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure (s 5 of the GIPA Act). There is also a general public interest in favour of the disclosure of government Information (s 12(1) of the GIPA Act). However, the right to access will not be available where "there is an overriding public interest against disclosure of the information" (s 9 of the GIPA Act).

There is an overriding public interest against disclosure of government information for the purposes of the GIPA Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure (s 13 of the GIPA Act). It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 of the GIPA Act (s 14(1) of the GIPA Act). The considerations listed in the Table under s 14 of the GIPA Act are the only other considerations that may be taken into account in determining whether there is an overriding public interest against disclosure (s 14(2) of the GIPA Act).

The power of the Tribunal to review a decision of the Respondent arises where a person is aggrieved by a “reviewable decision” of an agency. Such a person may apply to the Tribunal for administrative review under the Administrative Decisions Review Act 1997 (NSW) (“ADR Act”) of that decision (s 100 of the GIPA Act).

What are “reviewable decisions” of an “agency” is set out in s 80 of the GIPA Act. They include a decision to provide access or to refuse to provide access to information in response to an access application (s 80(d) of the GIPA Act). They also include a decision that government information is not held by the agency (s 80(e)).

There was no dispute that the Respondent was an “agency” for the purposes of the GIPA Act.

An agency has made a “reviewable decision” within s 80 of the GIPA Act, the agency being the Respondent and the “reviewable decision” including a decision that government information is not held by the agency.

The Tribunal under s 63 of the ADR Act is to determine the matter, based on the material before it, including any relevant factual material and any applicable written or unwritten law. It must decide what is the correct and preferable decision. It may decide to affirm, vary or set aside the decision and make a substitute decision, or set aside the decision and remit the matter to the agency in accordance with any directions or recommendations of the Tribunal.

The provisions of the GIPA Act referred to above apply where the Applicant has made a valid “access application” seeking “government information”. It is not in issue that the Applicant made an “access application” under Part 4 of the GIPA Act and that the information requested was “government information” (see definition of these terms in s 4 of the GIPA Act).

The Respondent has the onus of establishing that the decision it has made is justified (s 105(1) of the GIPA Act).

Proceedings

On 15 June 2026, the Tribunal made an order setting the matter down for hearing on 17 August 2026. The orders set out the scope of the proceedings as follows:

“Concerning any internal communications (including emails, messages or file notes between library staff and/or Council officers that refer to the JP (Justice of the Peace) on duty at Hornsby Library on 1 February 2026 between 3.30 pm and 4.30 PM - including their name”.

There were also orders for the filing and service of evidence and other material by each party.

On or after 15 June 2026, the Respondent undertook further searches directed specifically to the narrowed scope of the proceedings. As a result of the searches, additional responsive documents were identified and released to the Applicant under cover of a Revised Notice of Decision dated 10 July 2026.

The Tribunal on 15 July 2026 made orders extending times for compliance for certain filings by the Respondent and Applicant. Each party made filings in response to the orders. The Applicant's submissions included those filed on 11 August 2026.

The Respondent's evidence included a written Statement of Mr Wayne Kirker dated 16 July 2026. Mr Kirker was an employee of the Respondent.

On 24 July 2026, the Applicant sought leave to cross examine three further named persons as witnesses in addition to Mr Kirker.

On 5 August 2026, the Applicant wrote to the Tribunal concerning the possible issue of summonses directed at the three relevant persons. On 11 August 2026, he filed submissions in support of his request for leave to cross examine these witnesses.

In an email of 16 August 2026, the Applicant said that the uncertainty as to whether witnesses would be available affected his preparation because he said that the witnesses have "different areas of first-hand knowledge".

He also requested an adjournment of the hearing listed for 17 August 2026 if the outstanding witness application could not be determined in a manner that provided "a fair and practical opportunity for the witnesses to be made available and for me to prepare for their cross examination".

The Respondent opposed the attendance of the three witnesses in question for cross examination.

Hearing

The hearing of the matter took place on 17 August 2026.

The evidence before the Tribunal includes the written statement from Mr Wayne Kirker. He was present outside the room in which the hearing took place and was available for cross examination.

The Applicant said that he was unprepared to make his submissions. He said that this was because he was unable to do so without first cross examining all the witnesses he sought to cross examine.

The Respondent, on the other hand, said that the hearing should proceed. They said that they had prepared for the hearing in accordance with the Tribunal's orders. They also said that evidence from the three witnesses other than Mr Kirker, that the Applicant sought to cross examine was not necessary. They said that this was because the witness with the relevant knowledge was Mr Kirker, who had provided a statement in writing and was available for cross examination. They said that two of the witnesses did not have the relevant knowledge concerning searches. The remaining witness worked under the supervision of Mr Kirker.

The Tribunal told the parties that:

It would consider the submissions of the parties as to whether or not the evidence of the three further witnesses the Applicant sought to cross examine should be received.

If that evidence should be received, the Tribunal would make necessary orders for the giving of evidence by these witnesses.

If the Tribunal did not think that the evidence should be received, the Tribunal would either determine the matter without any further hearing or make further orders for the determination of these proceedings, including orders for a further hearing.

Consideration

The questions for determination are as follows;

Whether evidence from the three witnesses identified by the Applicant should be received for determination of this matter?

What further orders the Tribunal should make to allow for the determination of this matter?

If no such orders are to be made for the provision of further evidence and a further hearing, whether the Respondent's decision that certain information did not exist was the correct and preferable decision?

Should evidence from further witnesses be received?

The Applicant sought to cross-examine three witnesses in addition to Mr Kirker. The three witnesses were Mr Steve Fedorow, Ms Rhonda Menzies-Jackson and Ms Natacha Varlet-Green. All were personnel of the Respondent.

The Applicant submitted that oral evidence from the witnesses may assist the Tribunal in understanding the scope of the searches originally undertaken, the scope of the additional searches undertaken following the Tribunal's orders of 15 June 2026 and the circumstances in which additional responsive documents were located.

The Applicant said that the fact that further information was found after the second search of the Respondent carried out in June 2026, raised questions as to the adequacy of the Respondent's system and searches. He said that each of the three witnesses had a distinct and non-duplicative evidentiary role concerning matters relevant to the adequacy of the Respondent's searches.

The matter in dispute includes the adequacy of the searches conducted in response to the Applicant's access application. What the Tribunal needs to determine in the proceedings, is the question as to whether there is sufficient evidence about what searches were carried out, including evidence describing the data storage systems of the Respondent, evidence of how searches were carried out on that system and evidence of search parameters used to find information.

The initial question put by the parties to the Tribunal is whether or not further evidence should be called in addition to that of Mr Kirker. I understood the Respondent to say that that evidence was contained in the written statement of Mr Kirker before the Tribunal and that they relied on that evidence with nothing more. The Applicant disputes the sufficiency of this evidence.

Mr Kirker was, as at the time of his statement dated 16 July 2026, employed by the Respondent. He held the position of “Team Leader Governance - Governance and Customer Service”. His responsibilities included overseeing the Respondent’s administration of applications made under the GIPA Act. This included supervising two full-time Access to Information Officers responsible for processing formal access applications. His responsibilities also included supervising searches for documents within the scope of access applications, preparing decisions under the GIPA Act and ensuring the Respondent’s compliance with its statutory obligations under the GIPA Act.

Mr Kirker’s evidence was that the Respondent’s principal electronic records management system is its Content Management System (“CMS”). It ordinarily maintains the Respondent’s electronic records. He said that documents created by the Respondent’s staff, including documents received through the Respondent’s email system and website are captured and stored within the CMS, in accordance with the Respondent’s records management process.

Mr Kirker said that emails received directly by staff or teams are required to be manually registered in the CMS by the relevant staff member. He said that emails saved through the Respondent’s generic email accounts are also manually captured within the system.

The evidence of Mr Kirker was that where an email has not been registered in the CMS, it may be located through the Respondent’s email system. I understood Mr Kirker to say that not all emails would necessarily be placed on the CMS when manual filing had not occurred.

Mr Kirker said that searches of the CMS system required use of search parameters such as keywords, phrases, dates, document titles and other relevant criteria.

Mr Kirker says that the Respondent also has a small physical archive on site.

Mr Kirker says that he supervised the Respondent’s assessment of the Applicant’s access application made on 23 February 2026. This included supervising the searches undertaken by Ms Varlet-Green, a Senior Access to Information Officer, reviewing the documents identified through the searches and overseeing the preparation of the Respondent’s Notice of Decision. What was searched was a specific folder in the CMS used for storing records relating to customer complaints and incidents involving the Respondent’s library services.

Mr Kirker’s evidence was that the first search conducted by the Respondent did not identify any responsive documents.

Mr Kirker said that in addition, Ms Varlet-Green consulted the relevant Hornsby library staff to ascertain whether any further documents falling within the scope of the Applicant's access application existed. No further responsive documents were identified through these inquiries. Mr Kirker does not say whether or not these searches extended to the email accounts of the Respondent's staff.

However, following the orders made by the Tribunal on 15 June 2026, further searches undertaken and directed specifically at the narrowed scope, identified certain documents.

Mr Kirker describes the search terms used in the CMS to include the Applicant's name, "Justice of the Peace", "Justice Peace Roster", "JP", "JP Roster, "Justice Peace", "JP library", Justice Peace library", "Charlie Adams", "Adams" and "Library incident". He said that no responsive documents were initially identified through those searches on the CMS.

He said, however, that further searches of the relevant library staff's respective email accounts identified additional documents. Mr Kirker says that he then determined that there was no overriding public interest against disclosure and determined that these documents should be released in full.

A question for the Tribunal is whether the evidence set out in the written statement of Mr Kirker is sufficient for the Tribunal to determine this matter or whether further evidence should be called, by means of cross-examination of any witness or otherwise. I will go on to set out the Applicant's submissions as to what he wanted from the other witnesses.

The Applicant said that Ms Varlet-Green was involved in the Respondent's original handling of his access application. He says that she had informed the Tribunal that there were no internal written communications or records within the scope of the Applicant's request but that when further searches were undertaken, responsive documents were found. I understood the Applicant to say that Ms Varlet-Green could have evidence about why these circumstances arose.

Mr Kirker explains the circumstances in which responsive documents not found during the searches on the CMS were found subsequently. While Ms Varlet-Green may be able to provide further evidence concerning these circumstances, I am satisfied that Mr Kirker has sufficiently explained what happened. I understand that explanation to be that when searches were conducted on the CMS, these were searches of the CMS alone and did not extend to the email accounts of staff for emails not manually placed on the CMS. While this appears to be a deficiency in the scope of the earlier searches, the evidence before the Tribunal is sufficient to describe what happened and why it happened.

The Applicant sought to cross examine Ms Rhonda Menzies-Jackson. He said that she authored a document described as "JP incident" in email form that was subsequently identified during the Respondent's further searches. The Applicant said that her evidence was relevant to the creation and circulation of the email and communications following the incident and whether or not there was other relevant information.

What is before the Tribunal is the question of the adequacy of searches carried out. The Tribunal's task, in these proceedings, does not extend to review of matters concerning evidence from an author of a document about how the information in the document came into being or how it was circulated. To the extent that Ms Menzies-Jackson has information of this nature, review of how information is created by the Respondent or circulated is not a question within the jurisdiction of the Tribunal arising under s 80 of the GIPA Act in these proceedings. That jurisdiction does not extend to review of decisions concerning how information came into being or was circulated.

To the extent that Ms Menzies-Jackson has information about whether there are additional repositories of information available for searching and what other information may exist, these are matters on which Mr Kirker has given evidence. Even if Ms Menzies-Jackson also has information about these matters, there is no evidence as to what responsibility Ms Menzies-Jackson has for the workings of the CMS and information storage systems. The Respondent says that these are not matters that fall within the responsibilities of Ms Menzies-Jackson and are matters within the knowledge of Mr Kirker. I accept this submission.

The Applicant also sought to cross examine Mr Steve Fedorow. The Applicant said that he had enquired into the complaint surrounding events on 1 February 2026. He said that Mr Fedorow's evidence is relevant to enquiries undertaken concerning events of 1 February 2026 and the information relied upon in the conclusions he reached following the enquiry. He said that evidence from this witness could be relevant to determination of whether records, emails, file notes or other documents were created, received or retained in the course of those enquiries.

In circumstances where the issue before the Tribunal is the adequacy of searches, what it needs is evidence from someone who has knowledge of the information storage system and how it is searched. The Respondent said that they did not. There is nothing in the evidence to indicate that Mr Fedorow's responsibilities extended to these areas. The relevant knowledge is with Mr Kirker.

In circumstances where Ms Menzies-Jackson and Mr Fedorow did not have responsibility for the CMS and the information storage system of the Respondent and its workings, I find no reason to call either as a witness. Ms Varlet-Green had knowledge of that system as a Senior Access to Information Officer. However, she worked under the supervision of Mr Kirker. I see no reason to call her as a witness in circumstances where Mr Kirker has given evidence that describes the system and the searches carried out.

To the extent that the Applicant has questions about functions surrounding the creation of information, this is not a matter that falls within the scope of the GIPA Act in the circumstances at hand. The GIPA Act deals with information that already exists and does not deal with decisions to create information or decisions not to create information as explained at [59] above. In *Shvetsova v University of New England* [2015] NSWCATAD 49, the Tribunal said at [33];

“It is implicit in these provisions that the “information” for which a person may apply is information which already exists; the GIPA Act does not contemplate that the agency is required to, in effect, answer questions about its decisions or functions when responding to an access application”.

I am satisfied that the evidence provided by Mr Kirker is sufficient for the determination of the matter before the Tribunal. As the officer of the Respondent responsible for handling access applications, supervising searches and making decisions under the GIPA Act, I am satisfied that he has the relevant knowledge to give the evidence the Tribunal needs. I find nothing in the submissions of either party that allow me to conclude that any of the other witnesses sought by the Applicant could assist the Tribunal for the reasons set out above.

The Respondent as the relevant agency, has the burden of establishing that the decision it had made is justified under s 105 of the GIPA Act, subject to the exceptions set out in that section. The exceptions are not relevant in the present case. As such, it is for the Respondent to call such witnesses as it chooses, to provide the evidence required to discharge the statutory burden. It has chosen to call Mr Kirker and no one else. Having done so, it is not for the Applicant to ask for other witnesses without establishing any adequate basis for doing so. The Applicant has not shown any adequate basis for calling further witnesses for the reasons set out above.

The Appeal Panel in *Lonsdale v University of Sydney* [2015] NSWCATAP 277 made the following observations concerning the calling of witnesses by a review applicant. It said, at [33]:

“It would, we think, ordinarily not serve any legitimate forensic purpose to allow a review applicant to call witnesses who are bound by the agency’s position (its officers) or who support that position (the third parties). Those persons would often have knowledge of the content of the documents for which protection is sought, and there is a real danger that proceedings might be prejudiced or miscarry because of inadvertent disclosures or provision of contextual information. There might be a need to deal with hostile witness submissions. This all has the potential to make the proceedings more prolix”.

These observations are apposite in circumstances where each witness the Applicant wishes to call belongs to the agency. The agency has already provided its witness, namely Mr Kirker.

What further orders should be made to allow determination of these proceedings?

For the reasons set out above, I do not need to make any orders calling further witnesses to give evidence.

The Respondent objected to the calling of any additional witnesses because they said that the Respondent’s evidence was already before the Tribunal in the statement of Mr Kirker. They said that if leave were granted to the Applicant to call and cross examine further witnesses, this would significantly increase the length and cost of the proceedings and prejudice both parties.

I agree with the Respondent’s submissions. For the reasons set out at [65] - [68] above, I do not see any good reason to obtain evidence from the three further witnesses the Applicant wishes to call. Additionally, I accept the submissions of the Respondent concerning prolonging the proceedings and costs.

The evidence of Mr Kirker is set out in his Statement dated 16 July 2026. A question remains as to whether orders need to be made for a further hearing permitting Mr Kirker to give further oral evidence and be cross examined.

If there were any material gaps in Mr Kirker's evidence, a need for further evidence may arise. I have found no such gaps of a material kind, subject to the matters set out at [92] below.

The Applicant says that he had not made preparations to cross examine Mr Kirker. However, he was unable to explain adequately why he had not so prepared, having had his statement and also provided detailed submissions to the Tribunal on relevant matters he said needed further examination. What the Applicant had to do to comply with the Tribunal's orders was to prepare on the basis of what evidence he had. He did not do so. In the circumstances set out above at [65] - [68], it is not an adequate answer that the Applicant was not in a position to prepare without first having heard from the other witnesses.

I see no reason to delay determination of these proceedings by calling the three witnesses the Applicant seeks to cross examine for the reasons set out above at [65] - [68]. I also see no reason to delay determination of these proceedings by giving the Applicant a further opportunity to cross examine Mr Kirker in the circumstances set out at [74] above, where he had had the opportunity to do so and did not avail himself of that opportunity.

The evidence before me and the submissions of the parties, including the detailed submissions of the Applicant, are sufficient to allow me to determine these proceedings without a need for cross-examining witnesses or a further hearing. That evidence includes a description of the deficiencies of the first searches carried out and a description of the subsequent searches carried out that revealed responsive information. In these circumstances, I do not need to make orders for the giving of further evidence or a further hearing.

Delay to determination of these proceedings by calling further evidence does not, in the circumstances described above, accord with the guiding principle that the Tribunal is to facilitate the just, quick and cheap resolution of the real issues in the proceedings (s 36 of the Civil and Administrative Tribunal Act 1936 (NSW)).

I will go on to consider the remaining question for determination in these proceedings, namely that of whether reasonable searches have been carried out.

Reasonableness of searches?

The remaining matter in dispute is whether or not the searches undertaken by the Respondent met the required standard.

Section 53 of the GIPA Act sets out an obligation upon an agency to undertake such reasonable searches as may be necessary to find any of the government information applied for, that was held by the agency when the application was received.

The Appeal Panel in *Klaric v Commissioner of Police* [2020] NSWCATAP 153 considered the effect of s 53 of the GIPA Act and specifically what powers the Tribunal had where a question arose as to whether reasonable searches had been conducted. It said, at [33]:

“The question of whether government information is held by an agency is distinct from the question of whether the agency has conducted reasonable searches. The Tribunal has power to review a decision that information is not held, but it has no power to review the sufficiency of an agency’s search”.

While the reasonableness of searches is not, in and of itself, reviewable, it is, however, a relevant consideration as to the correctness of a determination that information is not held. In *Wojciechowska v Commissioner of Police* [2020] NSWCATAP 173, at [41], the Appeal Panel described the finding in *Klaric* in the following terms:

“... whether the agency has complied with the obligation imposed by s 53 is plainly a relevant factor in determining whether an ‘information is not held’ decision is the ‘correct and preferable decision’”.

The Tribunal in *CLT v Secretary, Department of Education* [2022] NSWCATAD 34, at [40], described the standard required for searches in the following terms:

“... searches must therefore be “logical”, “sensible”, “appropriate”, and “fair” but are not required to be “extreme” or “excessive” (to illustrate using synonyms and antonyms). The reasonableness standard is an objective one. It is what a fair minded person possessing reasonable knowledge of the agency’s obligations and the circumstances of the case would consider reasonable. It is not the standard of an obsessive, mistrustful, perseverative or belligerent observer”.

The further observations of the Appeal Panel in *Wojciechowska v Commissioner of Police* (No 2) [2020] NSWCATAP 257 as to the adequacy of searches of electronic databases are also relevant:

“I accept.... , that a relevant factor in determining whether the NSWPF satisfied .. [its obligations under s 53] is whether, at the time ...[the person carrying out searches] ... searched for the requested information, he had sufficient knowledge of the NSWPF’s databases and how to search those databases together with the skill to be able to apply that knowledge. I accept.... , that he is familiar with the NSWPF’s databases and has received some training in how to search them. Nonetheless, he could not be described as a forensic IT expert. A person with such expertise is likely to have been able to conduct a more rigorous and comprehensive search. It does not follow that the obligation imposed by s 53 is not satisfied. It requires “reasonable searches” to be undertaken using “any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically” (s 53(3)). Notably, an agency is not required to undertake any search that would require a “substantial and unreasonable diversion of the agency’s resources”: s 53(5). There may be cases where a person’s lack of knowledge of an agency’s databases and/or lack of knowledge and/or skill in retrieving information, tends to indicate that the search undertaken could not be characterised as reasonable.....

While s 105 requires the NSWPF to establish that the “information not held” decision is justified, it does not require the NSWPF to disprove that it holds the requested information. Having reviewed the available material and the submissions made by the parties, I am satisfied on balance that the NSWPF has discharged the obligation imposed by s 53”.

The Appeal Panel in *McNeill v Clarence Valley Council* [2025] NSWCATAP 184 described a respondent's obligation to undertake searches in the following terms, at [61] to [64]:

“Whether an agency has complied with the obligation imposed by s 53 of the GIPA Act is a relevant factor in determining whether a decision that “information is not held” by the agency is the “correct and preferable decision” (GIPA Act s 100(1); Administrative Decisions Review Act 1997 (NSW) (ADR Act) s 63(1)). The agency has the onus of establishing that the decision under review is justified: GIPA Act, s 105(1).

Section 53 of the GIPA Act imposes an obligation on an agency to undertake “such reasonable searches as may be necessary to find” the requested information: s 53(2). The obligation extends to searches using “any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically”: s 53(3). The obligation to search does not extend to searches that would require a “substantial and unreasonable diversion of the agency’s resources”: s 53(5).

Whether “reasonable searches” have been conducted by an agency is to be judged objectively, according to a standard of “reasonableness”. We agree with the following statement by the Tribunal in *Styles v Wollondilly Shire Council* [2023] NSWCATAD 193:

“[62] Section 53 imposes a standard of “reasonableness” in relation to the searches required to be undertaken by an agency rather than any absolute or strict standard. Such searches must therefore be “logical”, “sensible”, “appropriate” and “fair” but are not required to be “extreme” or “excessive” (to illustrate using synonyms and antonyms. The reasonableness standard is an objective one. It is what a fair minded person possessing reasonable knowledge of the agency’s obligations and the circumstances of the case would consider reasonable. It is not the standard of an obsessive, mistrustful, perseverative, or belligerent observer.”

Whether an access applicant can establish that there are reasonable grounds for his or her belief that information (or further information) the subject of the access application exists and is held by an agency will be relevant to, but not determinative of, the nature and extent of the searches required to be undertaken to discharge the obligation in s 53. As explained in *Wojciechowska* at [37], where the likelihood of the requested information existing and being held by the agency is far-fetched or fanciful, arguably no search could properly be characterised as being a reasonable search and therefore no obligation to search arises. Conversely, where it is reasonably likely that the requested information exists and is held by the agency, a cursory search said to be unable to find the requested information, is unlikely to satisfy the obligation imposed by s 53”.

There were deficiencies in the first search carried out by the Respondent before 27 March 2026. The search was confined to the CMS in circumstances where not all information held by the Respondent was stored on the CMS. This was because information that had not been manually entered into the system did not appear in the system and was as a result, incapable of being captured by means of a search of the CMS.

The subsequent search carried out pursuant to the Tribunal's orders of 15 June 2026, however, also searched the email system of the Respondent for emails not captured on the CMS. That search revealed certain information responsive to the Applicant's access application that was then released to him.

I am satisfied that the search parameters used by the Respondent were adequate, including as they did the Applicant's name and various descriptors for Justices of the Peace. I find no reason to conclude that these parameters were inadequate. The two searches together, in my opinion, despite the deficiencies in the first search before 27 March 2026, answer the description of searches of the relevant electronic data bases that are "logical", "sensible", "appropriate", and "fair. I am also satisfied that Mr Kirker had sufficient knowledge of the Respondent's information's storage system to give evidence as to the working of that system and the adequacy of searches.

I am satisfied in these circumstances that the searches carried out by the Respondent, though failing the first time, taking in to account the second search, were reasonable to the extent that they were searches carried out on the CMS and also the email system.

The Applicant said that the information he sought included information relating to issues concerning volunteer welfare and workplace health and safety considerations. He said that it was difficult to understand why there was no record of inquiries concerning these matters undertaken concerning the incident occurring on 1 February 2026.

These appear to be questions that go to the Respondent's practices and procedures for recording information. This is not a matter that is within the jurisdiction of the Tribunal in these proceedings. For the reasons set out at [64] above, the Tribunal's jurisdiction concerns a decision about access to information that actually exists and does not go further.

However, there is a further matter. The Respondent's evidence does not deal with the hard copy archive, in terms of whether its system involved placement of relevant information in that archive and if so, whether it was searched and how it was searched. This appears to be an unresolved question.

In these circumstances, I think that the matter should be remitted to the Respondent for reconsideration. In the course of such reconsideration, it is open to the parties to consult with one another to raise any relevant matters, in order for the Respondent to make a further decision. I will make orders to allow this to happen.

Orders

The administratively reviewable decision of the Respondent is set aside.

The administratively reviewable decision of the Respondent is remitted for reconsideration by the Respondent.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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