NOTICE OF DECISION

I refer to your access application made under the Government Information (Public Access) Act 2009 (GIPA Act) received by the NSW Department of Education and Training (the Department) on 11 August 2010.

You requested:

"The value added information for schools that have Year 12 HSC cohorts of more than 30 students."

After obtaining legal advice from the Crown Solicitor’s office about the matter, I have decided to refuse access to the information you seek. The advice I have received indicates that it would be unlawful for the department to release the information you have requested.

Put briefly, this is because the release of such information would be contrary to a provision of the Education Act 1990 which prevents the release of information which ranks or compares the results of schools, other than in accordance with a national agreement such as that which permits the publication of information on the My School website. The reasons for arriving at this view are explained in greater detail in the following pages.

I acknowledge that this decision does not accord with that made in a similar recent request by you (FOI-10-227) in which value-added results for selective schools were provided to you. I now consider that that earlier decision was incorrect. Unfortunately, it was made without considering the question of whether that release was permitted by the Education Act 1990. I note, further, an FOI request in 2009 by another person for the value-added information of each school was refused on similar grounds to this one.

I apologise to you for the error in that earlier request and for disappointing the reasonable expectation you would have, based on the result of your earlier request, of also having this information released to you.
REASONS FOR DECISION

Overriding Public Interest

The “value added index” is calculated from the School Certificate and Higher School Certificate results of students attending each relevant school. Based on the advice from the office of the Crown Solicitor I have decided that this constitutes a “school result” within the meaning of s.18A of the Education Act 1990. Consequently, its release would be in breach of section 18A (3) of that Act which states “school results must not be publicly revealed in a way that ranks or otherwise compares the results of particular schools, except as authorised by or under a relevant national agreement.” Therefore, the results fall within Clause 1 of Schedule 1(1) of the GIPA Act, which states, in part:

*It is to be conclusively presumed that there is an overriding public interest against disclosure of information the disclosure of which is prohibited by any of the following laws (which are referred to in this Act as *overriding secrecy laws*), whether or not the prohibition is subject to specified qualifications or exceptions and whether or not a breach of the prohibition constitutes an offence: ...*

*Education Act 1990 – provision made by or under section 18A (Publication of results of certain tests and other matters) or Division 2 of Part 5A (Health and safety risks at schools arising from student behaviour)...*

Additionally, should the information released be published in a newspaper or other document that is publicly available without permission of the principals of the schools involved, the person publishing such information would commit an offence against section 18A(4).

Having regard to the above, it is conclusively presumed that there is an overriding public interest against disclosure of the information, according to Clause 1 of Schedule 1(1) of the GIPA Act.

PROCESSING CHARGE

The time taken to process your application was approximately five hours; however, any applicable processing charges have been waived in this instance.

REVIEW RIGHTS

If you are aggrieved by my decision, you may seek review under Part 5 of the GIPA Act; however, as I am the Principal Officer of the agency, only an external review of my decision by the Information Commissioner or by the Administrative Decisions Tribunal is available. Please see enclosed leaflet “Your review rights under *GIPA Act*” for more details.
You should note that the time for seeking an external review is eight weeks after the date you were notified of this decision. Further information about your rights under the GIPA Act is available by contacting the Office of the Information Commissioner on freecall 1800 194 210 or at their website: www.oic.nsw.gov.au.

If you would like to discuss this determination with me, I can be contacted on 9561 8411.

Yours sincerely

Michael Coutts-Trotter
DIRECTOR-GENERAL OF EDUCATION AND TRAINING
MANAGING DIRECTOR OF TAFE NSW
28 September 2010

CC    Peter Fray, Editor, Sydney Morning Herald
      Deidre O'Donnell, NSW Information Commissioner

Encl. "Your review rights under GIPA Act".
Your review rights under the Government Information (Public Access) Act 2009

You have a right to request a review of a decision regarding the release of information if you disagree with any of the following agency decisions as set out under the Government Information (Public Access) Act 2009 (GIPA Act):

- a decision that an application is not a valid access application;
- a decision to transfer an access application to another agency, as an agency-initiated transfer;
- a decision to refuse to deal with an access application (including such a decision that is deemed to have been made);
- a decision to provide access or to refuse to provide access to information in response to an access application;
- a decision that government information is not held by the agency;
- a decision that information applied for is already available to the applicant;
- a decision to refuse to confirm or deny that information is held by the agency;
- a decision to defer the provision of access to information in response to an access application;
- a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant);
- a decision to impose a processing charge or to require an advance deposit;
- a decision to refuse a reduction in a processing charge;
- a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment; and
- a decision to include information in a disclosure log despite an objection by the access applicant (or a decision that the access applicant was not entitled to object).

You generally have three options to have a decision reviewed:

1. Internal review
   You have 20 working days after the notice of a decision has been posted to you to ask for an internal review.

   If a Minister or the principal officer of an agency made the decision, you cannot ask for an internal review, but you can ask for an external review (see below).

   The review must be carried out by an officer no less senior than the person who made the original decision. The review decision must be made as if it was a fresh application.

   There is a $40 fee for an internal review application except if the decision is ‘deemed refusal’ because the agency did not process your application in time. In this case, you cannot be charged any review fee.

   The agency must acknowledge your application within five working days of receiving it. The agency must decide the internal review within 15 working days (this can be extended by 10 days if the agency has to consult with a third party or by agreement with you).

2. External review by the Information Commissioner
   If you disagree with any of the decisions listed above, you can ask for a review by the Information Commissioner. [www.oic.nsw.gov.au]

   If you are the person applying for access to information, you do not have to have an internal review of the decision before asking the Information Commissioner to review it.

   If you are not the access applicant, you must seek an internal review before applying for review by the Information Commissioner.

   You have eight weeks from being notified of the decision to ask for a review by the Information Commissioner.

   On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

   Note: You cannot ask the Information Commissioner to review a decision that has already been reviewed by the Administrative Decisions Tribunal (ADT).

3. External review by the ADT
   If you disagree with any of the decisions listed above, you can ask for a review by the ADT [www.lawlink.nsw.gov.au/adt]. You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by the ADT.

   You have up to eight weeks from being notified of the decision to apply to the ADT for review. However, if you have applied for review by the Information Commissioner, you have four weeks from being notified of the Information Commission's review outcome to apply to the ADT.