

18 December 2020

Our ref: 21T-0699

By email: [REDACTED]

Dear [REDACTED]

**Notice of decision on your access application under the
Government Information (Public Access) Act 2009 (GIPA Act)**

Applicant: [REDACTED]
File reference: 21T-0699
Decision maker: Nick Yetzotis
Received date: 27 November 2020
Due date: 11 January 2021
Date of decision: 18 December 2020

1 Your access application

1.1 On 27 November 2020 Transport for NSW (TfNSW) received your access application under the GIPA Act for the following information:

'From 2019 to current date, Sydney Metro Southwest Extension: Bankstown to Liverpool documents such as:

- 1. latest report indicating progress of the project*
- 2. summary of consultation activities to date*
- 3. study/analysis of trackless trams and rapid bus*
- 4. indicative route alignment/stations and property acquisition.'*

1.2 In your access application you indicated a preference for receiving correspondence by email at [REDACTED]

2 Searches for information

2.1 Under the GIPA Act, we must conduct reasonable searches to locate the government information for which you have applied.

2.2 The following areas of TfNSW have conducted searches:

- Customer Strategy and Technology(CST)
 - Transport Planning
- 2.3 The searches were conducted by CST within Microsoft Teams, Objective and Outlook, using keywords such as:
- *“Greater Liverpool-Bankstown”*,
 - *“GLB”*,
 - *“Sydney Metro Southwest Extension”*,
 - *“Bankstown to Liverpool”*,
 - *“consultation”*,
 - *“trackless tram”*,
 - *“light rail”*,
 - *“route”*,
 - *“alignment”*,
 - *“property acquisition”*,
 - *“Sydney Metro southwest Extension Bankstown to Liverpool”*,
 - *“Stakeholder consultation”*,
 - *“Status update”*.
- 2.4 Searches for information responding to your application identified two relevant documents as described in the Table at Part 3.3 of this notice.
- 2.5 In relation to points 3 and 4 of the terms of your application, the Transport Planning team has advised that the project has not yet begun options analysis. For this reason there is no content relevant to the points 3 and 4 of your request. The project team is still working to establish the scope, objectives and need for the project at this stage.
- 2.6 I have also been advised by the Centre of Property Acquisition (CPA) team in CST that the information requested in points 3 and 4 is not held, as that kind of information relates to a possible future extension of the Metro line. CPA has had no involvement.
- 2.7 Information has been identified as falling within the scope of your application.

3 Decision

- 3.1 I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.
- 3.2 I have decided:
- to refuse to provide access to information that the search located under section 58(1)(d);
 - to provide access to information under section 58(1)(a); and
 - that some of the requested information is not held under section 58(1)(b).
- 3.3 Please see below a summary of my decision:

Page Ref.	Information	Act Ref.	Access
ITEM 1	Project Management Plan (Draft) Greater Liverpool –Bankstown Strategic Business Case Date: August 2020	s58(1)(d) - Sch 1 cl 2(1)(e)(f)	Refused
ITEM 2 n/a	Spreadsheet – Business Plan Report Date: November 2020 <i>Information not relevant to the information applied for has been deleted pursuant to section 74</i>	s58(1)(a)	Full
N/A	Information requested in points 3 and 4 of the application	s58(1)(b)	Not held

4 Reasons for Decision

- 4.1 Under section 9(1) of the GIPA Act, you have a enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.
- 4.2 Under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

ITEM 1: Cabinet Information:

Conclusive presumption of an overriding public interest against disclosure

- 4.3 Section 14(1) of the GIPA Act provides:

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.

- 4.4 Clause 2 of Schedule 1 of the GIPA Act relevantly provides:

2 Cabinet information

- (1) *It is to be conclusively presumed that there is an overriding public interest against disclosure of information (referred to in this Act as "Cabinet information") contained in any of the following documents:*
- (a) ...
 - (e) *a document prepared before or after Cabinet's deliberation or decision on a matter that reveals or tends to reveal the position that a particular Minister has taken, is taking, will take, is considering taking, or has been recommended to take, on the matter in Cabinet,*
 - (f) *a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in paragraphs (a)-(e).*
- (2) *Information contained in a document is not Cabinet information if:*
- (a) *public disclosure of the document has been approved by the Premier or Cabinet, or*

- (b) 10 years have passed since the end of the calendar year in which the document came into existence.
- (3) Information is not Cabinet information merely because it is contained in a document attached to a document referred to in subclause (1).
- (4) Information is not Cabinet information to the extent that it consists solely of factual material unless the information would:
- (a) reveal or tend to reveal information concerning any Cabinet decision or determination, or
- (b) reveal or tend to reveal the position that a particular Minister has taken, is taking or will take on a matter in Cabinet.
- (5) In this clause, "**Cabinet**" includes a committee of Cabinet and a subcommittee of a committee of Cabinet.
- 4.5 Under the GIPA Act, it is conclusively presumed that there is an overriding public interest against the disclosure of Cabinet information. When considering the possibility that information may be Cabinet information, I must be satisfied of the following:
- There is information held by TfNSW, and
 - The information is contained in any of the documents described in clause 2(1).
- 4.6 CST has advised me that **Item 1** of the information is the draft Project Management plan prepared for a Strategic Business Case (SBC) that will be submitted to Cabinet for approval.
- 4.7 I have examined the application of clause 2(1)(e) of Schedule 1 to **Item 1**, given the nature of the document and its intended submission to Cabinet for consideration and approval. It contains recommendations relevant to matters intended for consideration by the Minister and Cabinet. I have concluded that the document contains information which would certainly reveal or tend to reveal a position that the Minister for Transport and Infrastructure is recommended to take on the matters in Cabinet. For this reason I have concluded that clause 2(1)(e) applies to this document.
- 4.8 Further, I have found that clause 2(1)(f) of Schedule 1 of the Act applies to **Item 1**, as it is a draft document the content of which forms part of information subject to clause 2(1)(e).
- 4.9 In deciding that **Item 1** contains Cabinet information I have taken into account the principle of indivisibility of documents discussed by the NSW Civil and Administrative Tribunal (NCAT) in *Robinson v Transport for NSW; Robinson v Roads and Maritime Services* [2017] NSWCATAD 353, [79], [81], [107] and [111]. Under this principle, where a conclusive presumption against disclosure of Cabinet information applies to part of a document, the whole document is considered to be subject to an overriding public interest against disclosure. Accordingly, as **Item 1** contains Cabinet information, the document is withheld in its entirety.
- 4.10 I have considered whether the information is captured by clauses 2(2), 2(3) or 2(4) of Schedule 1 of the GIPA Act. In this regard I note that the document has not been approved for public disclosure by the Premier or Cabinet and that they are less than 10 years old. The document contains more than factual material.
- 4.11 As a conclusive presumption of an overriding public interest against disclosure applies, I do not need to perform the public interest test in respect of this information, and access to **item 1** is refused.
- ITEM 2:**
- 4.12 The **item 2** listed in the Table at Part 3.3 of this notice is a spreadsheet prepared by Transport Planning team which falls within the scope of your application. I have considered to release this item to you under section 58(1)(a).

- 4.13 However, the spreadsheet contains some information that is not subject to the terms of request has been deleted. As permitted by section 74, I have deleted that information as out-of-scope of the application.
- 4.14 The Transport planning team has advised me that the milestones and indicative dates listed in columns N and O respectively are not accurate and subject to change with the further progress of this project. Additionally, the team has also advised that this project is temporarily paused at this time.

Points 3 and 4: Information not held

- 4.15 When considering the issue of whether or not an agency holds requested information the following two questions arise:
- Are there reasonable grounds to believe that the requested information exists and is it information of the agency, and if so
 - Have the search efforts made by the agency to locate the information been reasonable in all circumstances of the matter.
- 4.16 As the requested information regarding **points 3 and 4** of the terms of your request is about a major transport infrastructure project, there are reasonable grounds to believe that it may be held by TfNSW.
- 4.17 For this reason I requested searches be conducted by CST.
- 4.18 Having reviewed the search advice provided by CST, and the additional response I received from CPA, I am satisfied that the searches regarding these points of the application were appropriate to satisfy the reasonableness standard that section 53 prescribes.
- 4.19 Based on the advice received from CST, I have decided under section 58(1)(b) that this information is not held.

Public interest test

- 4.20 To decide whether or not there is an overriding public interest against disclosure of the remaining information contained in the records identified in the Table at part 3.3 above, I applied the public interest test, which is set out in section 13 of the GIPA Act.
- 4.21 I applied the public interest test by:
- a. identifying any public interest considerations in favour of disclosure;
 - b. identifying any relevant public interest considerations against disclosure;
 - c. attributing weight to each consideration for and against disclosure; and
 - d. deciding where the balance between them lies.

Public interest considerations in favour of disclosure

- 4.22 Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.
- 4.23 I find the following considerations in favour of disclosure are relevant to your application:
- The general public interest in favour of disclosure.
 - Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance, such as Transport infrastructure project.

Public interest considerations against disclosure

- 4.24 When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act.
- 4.25 I have not identified any public interest considerations against disclosure.

Balancing the public interest considerations

- 4.26 As I have not identified any relevant public interest considerations against disclosure regarding item 2, there is no overriding public interest against disclosing the information. As such I have decided, under section 58(1)(a) of the GIPA Act, to provide access to the information.

5 Access

Form of access

- 5.1 You will be provided with a copy of the information that has been identified for release.

6 Processing Charges

- 6.1 Under section 64 of the GIPA Act, we may require you to pay processing charges, at a rate of \$30 per hour, for the time spent dealing with your access application. The application fee of \$30 counts as payment of one hour of the processing charges.
- 6.2 I have decided not to impose any additional processing charges for dealing with your application.

7 Disclosure Log

- 7.1 If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).
- 7.2 In the letter acknowledging receipt of your application, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log.
- 7.3 I note that you have not objected to such disclosure.
- 7.4 I have decided not to include details about your access application in the disclosure log.

8 Review rights

- 8.1 If you disagree with my decision, you may apply for this decision to be reviewed by seeking:
- an internal review by another officer of TfNSW, who is no less senior than me;
 - an external review by the NSW Information Commissioner; or
 - an external review by the NSW Civil and Administrative Tribunal (NCAT).
- 8.2 You have 20 working days from the date of this letter to apply for an internal review and 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT.

9 Further information

- 9.1 For your information and assistance, I have enclosed a fact sheet explaining your rights to have my decision reviewed.
- 9.2 Please do not hesitate to contact Sabita Kunwar by phone on 9983 2820 if you have any questions about this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'N. Yetzotis', with a stylized flourish at the end.

Nick Yetzotis

A/Manager, Information Access