

21 September 2018

Our ref: TRA-000335

Mr John Bellamy
2/4 Ford Road
MAROUBRA NSW 2035

By email: john@bellamy.biz

Dear Mr Bellamy,

Supplementary decision under the *Government Information (Public Access) Act 2009 (GIPA Act)*

Applicant: Mr John Bellamy
File reference: TRA-000335
Decision maker: Jarrod Whitbourn
Date of decision: 21 September 2018

1 Your access application

1.1 On **Error! Reference source not found.** TfNSW received your access application under the GIPA Act for the following information:

I seek the following:

1. *Information revealing:*

a. *The licensed and forecast average operational loadings for the light rail vehicles in the morning peak hour from 8am-9am on the CSELR [item 1a]*

b. *The number of buses to be replaced by the light rail vehicles in the morning peak hour from 8am-9am [item 1b]*

c. *The licensed and average operational capacities of those buses [item 1c]*

2. *Documents revealing the details of any traffic modelling undertaken for the CSELR project. In this respect I specifically seek information which is not subject to cabinet-in-confidence provisions, which contains any of the following information:*

a. *Cost/benefit analysis between light rail and electric buses [item 2a]*

b. *Cost/benefit analysis between light rail and business-as-usual (e.g. our current buses) [item 2b]*

c. Forecast likely average light rail journey time from Kingsford to the City and Randwick to the City. ' [item 2c]

- 1.2 On 23 January 2017, a decision was made by David Gosling, A/Manager, Information & Privacy, TfNSW responding to your application (**the original decision**).
- 1.3 Your application, and decisions made in respect of your application, has been the subject of a series of reviews and additional decisions, as follows:
- | | |
|------------------|--|
| 6 April 2017 | the Information Commissioner completed her review of the original decision

(IC review 1) |
| 21 July 2017 | Clarinda Campbell, A/Principal Manager, Information & Privacy, completed her internal review of your application

(internal review 1) |
| 12 December 2017 | the Information Commissioner completed her review of the internal review decision

(IC review 2) |
| 31 January 2018 | Patrick O’Meally, Senior Legal Counsel – Regulatory, completed his internal review

(internal review 2) |
| 14 May 2018 | the Information Commissioner completed a review of the internal review 2

(IC review 3) |
- 1.4 On 19 June 2018 you sought a review of the original decision in the NSW Civil and Administrative Tribunal (NCAT). Through the course of preparing information for these proceedings, new searches for information were conducted by TfNSW and additional information which was understood to be within the terms of your application was located.
- 1.5 The following parts of TfNSW conducted searches:
- Infrastructure Service Division, Sydney Light Rail (SLR)
 - Freight Strategy and Planning (FSP)
- 1.6 SLR was chosen to conduct searches as this is the area which is responsible for the delivery of the Central Business District and South East Light Rail (**CSELR**). Searches were conducted through the relevant records held by SLR using a range of key word searches.
- 1.7 Searches were conducted through DeskSite and teambinder which are the document management tools used by that area.
- 1.8 FSP was also chosen as this was the part of TfNSW which was responsible for the development of the key documents for the CSELR up to 2014. The searches were conducted through the FSP records by the person who was, at the relevant time, primarily responsible for the records which are most likely expected to respond to the terms of your application.
- 1.9 Targeted searches were conducted through Objective for all relevant documents by the subject matter expert.

- 1.10 I have been asked to consider this new information and make a supplementary decision about its release.
- 1.11 In so doing, I have not reconsidered any aspect of the earlier decisions in relation to this matter except to the extent that they assist me in understanding the new information and, relevantly, whether the new information assists in responding to the terms of your application.

Cabinet Information

- 1.12 However, I do note that the current NCAT proceedings will include the consideration of whether particular information is 'Cabinet Information'. Under the GIPA Act, such information attracts a conclusive presumption of an overriding public interest against disclosure. As discussed below, I have identified a number of the additional documents as being subject to the same provisions and have dealt with them accordingly.
- 1.13 In respect of Cabinet Information, I note that 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.

Clause 2 of Schedule 1 of the GIPA Act relevantly contains:

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:*
- ...
- (b) *a document prepared for the dominant purpose of its being submitted to Cabinet for Cabinet's consideration (whether or not the document is actually submitted to Cabinet),*
- ...
- (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).*
- ...
- (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.*

- 1.14 Due to the conclusive presumption of an overriding public interest against disclosure, information which is identified as Cabinet Information below will not be released to you.

Public interest test

- 1.15 In respect of the information which has been identified, in order to decide whether or not there is an overriding public interest against disclosure of the information you asked for, I am required to apply the public interest test, which is set out in section 13 of the GIPA Act.
- 1.16 I have 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

1.17 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. Specifically:

- 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.

Public interest considerations against disclosure

1.18 Any public interest consideration against disclosure, should they apply, will be identified below in respect of the particular information.

2 Decision

2.1 I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act, to supplementary decision in respect of your access application.

2.2 Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

2.3 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.

2.4 The GIPA Act provides a mechanism through which people can request access to 'government information' which is contained in a record held by an agency.

2.5 It occurs to me that each of the items in the first part of your application are essentially asking questions for which there may be a distinct answer – as distinct from seeking access to particular records held by an agency. For example, in item 1(a) your request:

The licensed and forecast average operational loadings for the light rail vehicles in the morning peak hour from 8am-9am on the CSELR

The response to this item could reasonably be expected to be a series of numbers which detail the numbers of each vehicle for this time-period, the maximum (licensed) capacity of these vehicles and the expected patronage of these vehicles.

2.6 Likewise, a response for item 1(b):

The number of buses to be replaced by the light rail vehicles in the morning peak hour from 8am-9am

is possibly more straight-forward and could be represented as a single number or numbers.

2.7 The response for Item 1(c) would be of similar complexity as the response for item 1(a).

2.8 It occurs to me that an agency could deal with such 'questions' in GIPA applications by, either providing a new record of information (in accordance with section 75 – providing access by creating a new record) or by providing access to information which goes the furthest to answering the questions.

2.9 The alternative would be for the agency to consider all sources of information which could contain this information and then redact or remove all information which does not answer

the question. The disadvantage to such an approach would be that the search for records may involve a substantial amount of time and, in some cases, result in either the applicant being requested to pay processing charges or render the application an unreasonable and substantial diversion of the agencies resources to deal with. This additional time spent to deal with the application may result in no additional relevant information being provided. While this approach may be required for other GIPA matters, responding this way to items 1(a) –(c) of your application may only have served to add additional cost to dealing with the application for no appreciable benefit.

- 2.10 In addition, as these items are for discrete answers (numbers), earlier calculations or analysis may no longer be relevant to the questions which you asked at the time of your application. As you would appreciate, forecasts of estimated patronage and usage are dependent on a number of factors which change over-time. To this extent, I note that you have not specified a particular date for which you request information in relation to the first item of your request.
- 2.11 As your application does not specify a particular date for the information in item 1, I have understood your application to be for the earliest model forecasting for the CSELR, 2021
- 2.12 The original decision in relation to your application dealt with the first items of your request by pointing you in the direction of publicly available information. The date of the Report which was referenced was dated March 2014.

Additional information – item 1a

- 2.13 As mentioned above, searches have been conducted to determine whether additional information is held by TfNSW which had not previously been considered.
- 2.14 Five documents were located which are referred to as 'Demand Reports'. These Demand Reports (totalling 1183 pages) are various versions of the analysis that leads to decisions on transport policies, programs and projects. I understand that the information contained in the Demand Reports is used to help decision-makers in their selection and refinement of transport policies, programs and projects.
- 2.15 It occurs to me that data relating to the latest available demand analysis (at the time of your application) contained in these documents would most closely relate to your application. I am informed that the last such report which was prepared for this project was the Demand Report 5.3.
- 2.16 I have also been provided with seven datasets of information in Microsoft Excel format (**datasets**) which relate to Sydney Light Rail capacity in 2021. These datasets relate directly to the Demand Reports and, to a certain extent, replicate the information contained therein. This detailed information goes far beyond what is requested in item 1(a) of your application and it details a number of small variations and adjustments to the figures relating to the stop locations, frequency of services and stabling considerations. As with the Demand Reports, it is evident in these datasets that information has been updated and changed over the time that they were compiled. After reviewing a number of pages of these documents, it is not clear to me how this information, in its current form, directly responds to the terms of your request except to the extent that the analysis of this information could provide the answers to the question which relates to a particular point in time.
- 2.17 Noting that a response has already been provided for item 1(a) in the original and internal review decision, it occurs to me that the one of the additional documents located (a dataset) was prepared later (26 May 2014) than the information which has already been made available. This dataset is based on the Demand Report 5.3 and, as such, as at the date of your application, was based on the latest prepared version of the information about the patronage and capacity of the licensed and forecast average operational loadings for the light rail vehicles in the morning peak hour from 8am-9am on the CSELR capacity in 2021.
- 2.18 Three pages (workbooks) of this dataset are relevant to your application.

CSELR PTPM: Round 5.3 Model Specifications – Version 3: 26 May 2014 (Summary Table; Summary Chart 2021 NB; Summary Chart 2021 SB)	Released
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2.19 I have not identified any public interest considerations against releasing the above information to you. As such, after balancing the relevant considerations, in favour and against release of the information, I have found that the balance weighs in favour of releasing this information to you.

Additional information – items 1b & 1c

2.20 Your question in relation to items 1b and 1c appears to assume that the implementation of the CSELR will involve the direct replacement of bus services for light rail services. However, the documents which I have reviewed, many of which are related to item 2 of your application, discuss and consider various options for the partial or complete redesign of the public transport services including a redesign of the existing bus services. The documents consider and compare different options and adjustment to these options calculated on a range of transport and non-transport related factors. As such, the information held by TfNSW does not easily avail itself to responding to such questions. That noted, there are some additional documents which were prepared which partially respond to these questions, as follows:

Correspondence – Standing Advice on Bus Changes <i>(Standing advice)</i>	Released
Planning and Infrastructure questions on Traffic and Transport (21 March 2014) TfNSW responses (21 March 2014) <i>(EIS evaluation)</i>	Released

2.21 I have reviewed both of the above documents and have not identified any public interest considerations against releasing the above information to you. As such, after balancing the relevant considerations, in favour and against release of the information, I have found that the balance weighs in favour of releasing this information to you.

2.22 In addition to the above, I note two additional publicly available documents which contain some information relevant to these items of your request:

Sydney’s Light Rail Future (December 2012)

<https://mysydneycbd.nsw.gov.au/sites/default/files/user-files/uploads/light-rail-future-web.pdf>

Business Case Summary (November 2013)

<http://data.sydneylightrail.transport.nsw.gov.au/s3fs-public/CBD%20AND%20SOUTH%20EAST%20LIGHT%20RAIL%20%E2%80%93%20BUSINESS%20CASE%20SUMMARY.pdf>

2.23 Further, general information about the capacity of different buses used in Sydney is included in the below document:

Sydney’s bus future (December 2013)

https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/sydney-bus-future-final-web_0.pdf

Additional information – item 2

- 2.24 Item 2 of your application requests access to ‘documents revealing any traffic modelling’ which contains information about the cost/benefit between: light rail and electric buses; light rail and business as usual and the forecast average light rail journey time.
- 2.25 I am informed that documents which detail ‘traffic modelling’ are not likely to also contain a ‘cost/benefit analysis’ as they relate to two separate processes. As such, responding to this item of your application presents some difficulty in determining exactly what information is being sought and confusion with the searching officers.
- 2.26 Nevertheless, the most recent search for information has revealed additional information which relates to ‘traffic modelling’ and, separately, ‘cost/benefit analyses’. I will consider each below in respect of item 2 of your application.

Additional information – item 2a & 2b (cost/benefit analysis)

- 2.27 From what I have read in the information which was retrieved, cost benefit analysis (CBA) appears to have been conducted for a range of purposes during the course of the planning for the **CSELR**. A comparison of light rail to ‘do-nothing’ or ‘electric buses’ is only one such type of CBA which has been conducted.
- 2.28 In respect of ‘electric buses’, I am informed, and understood from what I have read, that the CBAs that consider the modal options do not distinguish between ‘electric’ and normal buses. That noted, any CBA involving any type of bus has been considered as within scope of your application.
- 2.29 Of the information located, the document which most closely relates to item 2a and 2b of your application would appear to be the ‘Transport for NSW – Sydney Light Rail Program – Rapid Economic Appraisal – Addendum Report 2: Bus Comparator’ (Bus Comparator). To a certain extent, this document could be described as the cost/benefit analysis of the different modes considered in the light rail business case with the other documents being ancillary to it in this respect. However, the Bus Comparator was considered in the internal review decision and is known as document 7 in the current NCAT proceedings – as such, I will not consider it further.
- 2.30 The additional information has been located, as follows:

Business Case: Project Brief: CBD and South East Light Rail (Final Business Case)	Refused Cabinet Information
Transport for NSW – CBD and South East Light Rail Detailed Economic Appraisal (29 August 2013) (PWC Final Report)	Refused Cabinet Information
Transport for NSW – Sydney Light Rail Strategic Plan: Preliminary Economic Appraisal (Draft report V1.0) (22 January 2013) (PWC Draft Report)	Refused Cabinet Information

- 2.31 I understand that the **Final Business Case** was prepared for the dominant purpose of being submitted to Expenditure Review Committee of Cabinet and that it was considered by Cabinet.
- 2.32 It occurs to me that as the Final Business Case was prepared for the dominant purpose of being submitted to Cabinet it is ‘Cabinet Information’ within the definition of clause 2(1)(b) of Schedule 1 of the GIPA Act.

- 2.33 The Final Business Case draws from the specific information contained within a number of other documents. I have reviewed the Final Business Case and note that the section of this document which contains the details of the cost benefit analysis draws directly from the **PWC Final Report** and, in fact, references this document for more information about the detail of the methodology applied to arrive at the conclusions in the Final Business Case.
- 2.34 Having regard to the connection between these two documents (i.e., the Final Business Case relies on the information contained in the PWC Final Report), it occurs to me disclosing the information contained in the PWC Final Report would constitute disclosing a copy of or part of, or an extract from, a document which was prepared for the dominant purpose of being submitted to Cabinet. As such, Clauses 2(1)(f) and (b) appear to apply in respect of this information and the PWC Final Report is Cabinet Information.
- 2.35 The **PWC Draft Report** is watermarked 'draft' and contains a number of drafting comments. This document is very general and does not contain a direct cost/benefit analysis of electric buses, but includes evaluation of alternative route options for light rail. As such; it appears to be within the scope of your application. I am informed that this document was created for the purpose of providing analysis for a Cabinet submission, which did not proceed.
- 2.36 I have reviewed this document and while the subject matter is similar to the PWC Final Report, the way that the information has been presented is quite different.
- 2.37 I have reviewed the document and note that it specifically states that the purpose of this document was to provide analysis for a Preliminary Business Case.
- 2.38 Having regard to the relationship between the PWC Final Report and the Final Business Case (which both were written after the PWC Draft Report), it occurs to me that the analysis conducted by PWC in the PWC Draft Report is part of a continuum with the PWC Final Report and Final Business Case and that disclosing the former document would have the effect of disclosing the information contained in the latter documents.
- 2.39 In addition, having regard to the nature of the information presented in the PWC Draft Report, it occurs to me that the disclosure of this document would reveal or tend to reveal the position that a particular Minister will take, on the matter in Cabinet, even though, as it happens, the matter did not eventually proceed to Cabinet. As such it is within the definition of 'Cabinet Information' as contained within Clause 2(1)(e) of Schedule 1 of the GIPA Act.

Additional information – item 2 (traffic modelling)

- 2.40 As indicated above [2.24] the reference to 'traffic modelling' is at odds, or, at least, not consistent with the specific information which you have requested about 'cost/benefit analyses. Irrespective of this difficulty in the terms of your application it would appear that some information about traffic modelling has already been retrieved and is the subject of the NCAT proceedings.
- 2.41 In the same way, the below additional information relates to traffic modelling, but not any cost/benefit analysis:

Sydney CBD Bus and Traffic Paramics Modelling (Rev 2.0 Draft Final) (28 June 2012) (Draft SKM Report)	Refused Cabinet Information
Sydney CBD Bus and Traffic Paramics Modelling – Stage 2 (Rev 2.0 Draft Final) (Draft SKM Stage 2 Report)	Refused Cabinet Information

Sydney CBD Bus and Traffic Paramics Modelling – Independent Technical Review Stages 1 & 2 – prepared by GTA Consultants (October 2012) (GTA Final Report)	Refused Cabinet Information
Sydney CBD Bus and Traffic Paramics Modelling – Traffic Modelling Summary Report – prepared by GTA Consultants (February 2014) (GTA Draft)	Released
SE Corridor Maps	Released

- 2.42 The **Draft SKM Report** is an earlier version of the document referred to as document 9 in the current NCAT proceedings.
- 2.43 I note that the final version of this document is appended as Appendix Q to the Strategic Business Plan. It occurs to me that the same considerations apply in respect of the Draft SKM Report as applies to document 9 in the NCAT proceedings, namely that disclosing this document would tend to reveal the position that the Minister was recommended to take on the matter before Cabinet. As such the Draft SKM Report is within the definition of ‘Cabinet Information’ as contained within Clause 2(1)(e) of Schedule 1 of the GIPA Act.
- 2.44 The **Draft SKM Stage 2 Report** is a revision of the Draft SKM Report (and presumably the final version thereof) and details how the new data updates the previous information. As such, the disclosure of the later document would have the same effect as disclosing the earlier document in that would tend to reveal the position that the Minister was recommended to take on the matter before Cabinet.
- 2.45 The **GTA Final Report** is a peer review of both of the SKM Reports. I note that there are a number of references to the information in the GTA Final Report within the Final Business Case.
- 2.46 As such, it occurs to me that disclosing the information contained in the GTA Final Report and the Draft SKM Stage 2 Report would constitute disclosing that would tend to reveal the position that the Minister was recommended to take on the matter before Cabinet. As such the GTA Final Report and the Draft SKM Stage 2 Report are within the definition of ‘Cabinet Information’ as contained within Clause 2(1)(e) of Schedule 1 of the GIPA Act.
- 2.47 I have reviewed both the **GTA Draft** and the **SE Corridor Maps** and not identified any public interest considerations against releasing this information. As such, after balancing the relevant considerations in favour and against release of the information, I have found that the balance weighs in favour of releasing this information to you.

Additional information – 2(c)

- 2.48 One additional document has been located and identified as being responsive to item 2(c) of your application, as follows:

Initial Light Rail Operations Simulation and Analysis – Interfleet Technology 26 April 2013 (Interfleet document)	Refused Cabinet Information
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- 2.49 I am informed that the **Interfleet document** formed part of the source material for the Final Business Case and, as such, is part of the information which recommended that the Minister take a particular position on a matter before Cabinet. I note that the Final Business Case does contain reference to a number of documents prepared by Interfleet which are dated after the Interfleet document but deal with the same subject matter. I am

satisfied that the interfleet document which was prepared before Cabinet's deliberation or decision on a matter that reveals or tends to reveal the position that a particular Minister has been recommended to take, on the matter in Cabinet and is within the definition of 'Cabinet Information' as contained within Clause 2(1)(e) of Schedule 1 of the GIPA Act.

3 Processing Charges

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.

I have decided not to impose any additional processing charges for dealing with your application.

4 Disclosure Log

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).

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.

I have decided not to include details about your access application in the disclosure log.

5 Review rights

As you are aware, my decision is a reviewable decision under the GIPA Act. Accordingly, you may apply for this decision to be reviewed by seeking:

an internal review by another officer of this agency, 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).

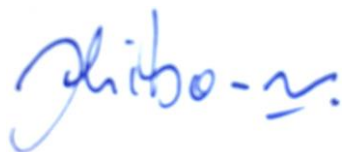
You have 20 working days from the date of this letter to apply for an internal review and 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT.

6 Further information

For your information and assistance, I have enclosed a fact sheet explaining your rights to have my decision reviewed.

Please do not hesitate to contact me by phone on 8202 3321 if you have any questions about this letter.

Yours sincerely,



Jarrod Whitbourn

Associate Director, Information Access