



## Review report under the *Government Information (Public Access) Act 2009*

Applicant: Mr John Bellamy  
Agency: Transport for NSW  
Report date: 06 April 2017  
IPC reference: IPC17/R000080  
Keywords: Government information – searches for information

### Contents

Summary.....	2
Background.....	2
Submissions from the Applicant.....	2
Decision under review .....	2
Searches for information.....	3
Are there reasonable grounds to believe further information exists?.....	3
Have search efforts by the Agency been reasonable?.....	5
Other guidance.....	5
Recommendations .....	6
Review rights.....	6
Completion of this review.....	7

## Summary

1. Mr John Bellamy (the Applicant) applied for information from Transport for NSW (the Agency) under the *Government Information (Public Access) Act 2009* (GIPA Act).
2. The Agency decided that the information applied for was already available to applicant.
3. The Information Commissioner recommends under section 93 of the GIPA Act that the Agency make a new decision by way of internal review.

## Background

4. The Applicant applied under the GIPA Act to the Agency for access to the following information:
  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*
    - b. *The number of buses to be replaced by the light rail vehicles in the morning peak hour from 8am-9am*
    - c. *The licensed and average operational capacities of those buses.*
  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*
    - b. *Cost/benefit analysis between light rail and business-as-usual (e.g. our current buses)*
    - c. *Forecast likely average light rail journey time from Kingsford to the City and Randwick to the City.*
5. In its decision issued on 23 January 2017, the Agency decided that the information has been made publicly available by the Agency and is therefore already available to the Applicant.

## Submissions from the Applicant

6. In seeking a review of the decision by the Information Commissioner, the Applicant submits that the information provided is *...Out of Date, Inaccurate and No Information.*
7. In the course of this review we have considered submissions received from the Applicant on 13 March 2017 and 1 April 2017.

## Decision under review

8. The decision under review is the Agency's decision that the information applied for is already available to the Applicant.
9. This is a reviewable decision under section 80(f) of the GIPA Act.

## Searches for information

10. The Agency's obligations with respect to searches are set out in section 53 of the GIPA Act. When deciding a request for information, an agency must first comply with the requirements of section 53(2) of the GIPA Act and undertake 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 agency's searches must be conducted using the most efficient means reasonably available.
11. When the Information Commissioner reviews whether an agency's search for information was sufficient, we consider two questions, derived from *Smith v Commissioner of Police [2012] NSWADT 85*:

*In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:*

  - (a) *Are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so*
  - (b) *Have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case*
12. When considering whether there are reasonable grounds to believe that information exists and whether searches to locate information were reasonable, the facts, circumstances and context of the application are relevant.
13. Key factors in making an assessment about reasonable searches include 'the clarity of the request, the way the agency's recordkeeping system is organised and the ability to retrieve any documents that are the subject of the request, by reference to the identifiers supplied by the applicant or those that can be inferred reasonably by the agency from any other information supplied by the applicant' (*Miriani v Commissioner of Police, NSW Police Force [2005] NSWADT 187* at [30]).
14. Agencies should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request, which will depend upon the circumstances of the request and the usual business practices of the agency. For further guidance regarding searches, we refer the Agency to our knowledge update on Reasonable searches under the GIPA Act, available at <https://www.ipc.nsw.gov.au>.
15. The GIPA Act does not require an agency to include details of its searches in a notice of decision. However, it is good practice for written decisions to clearly explain what the search processes were, what was found, an explanation if no records were found, what was released and what was held back. Details of searches should include where and how the agency searched, a list of any records found – and if appropriate, a reference to the business centre holding the records, the key words used to search digital records (including alternative spellings used) and a description of the paper records that were searched.

### Are there reasonable grounds to believe further information exists?

16. In its notice of decision the Agency stated that the information is already publicly available. The Agency provided website addresses to two documents produced by the Agency (document 1 and document 2). The Agency also provided page references in these two documents to information relevant to each component of the application.

17. We note document 1 is dated 2014. In the course of this review we contacted the Agency to ascertain if more recent information exists. We were advised that there is no more recent information and that this is not unexpected as generating updated information is a costly and lengthy process.
18. In the course of this review we have considered:
  - a. the publicly available information provided to the Applicant in documents 1 and 2;
  - b. information provided by the Applicant consisting of the *CBD and South East Light Rail Consolidated instrument SSI-6042 MOD 1* and a letter to the Applicant from the Principal Manager, Ministerial & Government Services which is undated; and
  - c. the TFNSW CSELR Business Case Summary dated 2013 which is publicly available.
19. The publicly available information provided to the Applicant in documents 1 and 2 appears to be a summary document of matters considered by the Agency relating to the CSELR. The information also appears to make reference to further underlying information upon which the report is based.
20. For example, in document 1 it states:

*The CSELR proposal was developed as part of a comprehensive options identification and assessment process consisting of three key stages – strategic assessment, options assessment and definition design. The options identification and assessment process is detailed in section 3.4 of the EIS (Volume 1A)...*

*The first of these stages, strategic assessment, looked at what transport solution would be best suited to addressing transport challenges...The assessment of the different transport solutions is included in the NSW Long Term Transport Master Plan (NSW Government 2012a) and supporting transport reports.*
21. On the face of the above, it would appear that the documents referred to in document 1 (for example, *supporting transport reports*) may be captured by the terms of the Applicant's request.
22. In accordance with the information from document 1 above the Applicant was also provided with access to the publicly available 'EIS' (document 2). We note that we were unable to access the link as provided in the notice of decision and it was subsequently provided by the Agency at our request.
23. We have considered the information provided in the document 2 and note that the report states:

*The CSELR proposal was developed as part of a comprehensive options identification and assessment process which was undertaken to assess the feasibility of alternative options to deliver the necessary transport system capacity within inner Sydney and the CBD.*
24. Document 2 appears to refer to an assessment of alternative options having been undertaken. It would appear that such information may fall within the scope of the Applicant's request insofar as the applicant refers to *traffic modelling* and *cost/benefit analysis*.
25. On the face of both of the documents it appears that the Applicant was provided with publicly available documents which consist of a summary of

information drawn from underlying documents that may fall within the scope of the Applicant's request.

26. In submissions provided in the course of the external review the Applicant states that: *The traffic modelling (Network Management Plan or NMP) is a condition of Clause B26 of the CBD and South East Light Rail Consolidated instrument SSI-6042 MOD 1 approved 17 February 2015.* We have considered this information and agree that it appears to indicate that a requirement of the CSELR project included the preparation of a Network Management Plan (NMP). We would consider a document containing information in relation to traffic modelling may fall within the scope of the request insofar as the Applicant refers to *any traffic modelling undertaken.*
27. We have also considered a publicly available document dated 2013 entitled *CBD and South East Light Rail Business Case Summary* which states: *The cost benefit analysis also considered operating costs...* This suggests to us that it is reasonable to believe that information consisting of a cost/benefit analysis may be held by the Agency and may fall within the scope of the request.
28. The references in publicly available documents to studies and assessments both undertaken by the Agency and required by the Agency to be undertaken, suggest to us that it is reasonable to believe that further information exists.

### **Have search efforts by the Agency been reasonable?**

29. In the notice of decision the Agency identifies the Sydney Light Rail Delivery Office (SLRDO) as the area of the Agency which conducted searches.
30. In response to the request for external review the Agency conducted further searches. We made enquiries with the Agency in relation to how it conducted these searches for information relating to the Applicant's request.
31. In response to our enquiries the Agency advised that their searches involved requesting SLRDO and CBD Coordination Office (CBDCO) conduct a further check and confirm if any additional information was held relevant to the terms of the request. The two offices responded to confirm that no further information is held by the Agency within the scope of the request.
32. Section 97 of the GIPA Act requires agencies to justify the decision that they make. Based on our review of the notice of decision and through our enquiries conducted as part of this external review, we are not satisfied that the search efforts made by the Agency to locate information have been reasonable. This is because upon a review of the information available to us in relation to details of searches undertaken we are not satisfied that the Agency's obligations under section 53 of the GIPA Act have been acquitted.
33. On this basis, we are not satisfied that the Agency conducted reasonable searches for information pertaining to the Applicant's access request in the first instance.

### **Other guidance**

34. It is the role of the Information Commissioner to provide information, advice, assistance and training to agencies and the public on matters relevant to the GIPA Act.
35. An access request needs to be clear and to enable the agency to identify the information applied for. This is so that agencies are able to understand the scope of the application and make a decision that is consistent with what has

been requested. An access request that contains choices or placing conditions has the potential to confuse and lead to poor outcomes.

36. If agencies are uncertain or cannot interpret an access application, it should seek to contact the applicant for clarification. This includes identifying the exact information that is being sought by an applicant when the scope appears to be non-exhaustive.
37. In addition, applicants should also be clear about the exact nature of the government information that is applied for. This includes refraining from asking agencies to answer questions or provide explanations. This is because while the GIPA Act allows applicants to seek access to information held in a record by an agency, it does not require agencies to answer questions.
38. In order to avoid any potential misunderstandings we encourage agencies to communicate with applicants during the process to clarify and establish the exact scope of the information sought.

## **Recommendations**

39. The Information Commissioner recommends, under section 93 of the GIPA Act, that the Agency make a new decision by way of an internal review.
40. In making a new decision, have regard to the matters raised and guidance given in this report.
41. We ask that the Agency advise the Applicant and us within 10 business days of the actions to be taken in response to our recommendations.

## **Review rights**

42. Our reviews are not binding and are not reviewable under the GIPA Act. However a person who is dissatisfied with a reviewable decision of an agency may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of that decision.
43. The Applicant has the right to ask the NCAT to review the Agency's decision.
44. An application for a review by the NCAT can be made up to 20 working days from the date of this report. After this date, the NCAT can only review the decision if it agrees to extend this deadline. The NCAT's contact details are:

NSW Civil and Administrative Tribunal  
Administrative and Equal Opportunity Division  
Level 10, John Maddison Tower  
86-90 Goulburn Street,  
Sydney NSW 2000

Phone: 1300 006 228

Website: <http://www.ncat.nsw.gov.au>

45. If the Agency makes a new reviewable decision as a result of our review, the Applicant will have new review rights attached to that new decision, and 40 working days from the date of the new decision to request an external review at the IPC or NCAT.

## **Completion of this review**

46. This review is now complete.
47. If you have any questions about this report please contact the Information and Privacy Commission on 1800 472 679.

Elizabeth Tydd  
**Information Commissioner**