

21 July 2017

Our ref: TRA-000335

Mr John Bellamy

By email: john@bellamy.biz

Dear Mr Bellamy,

Internal Review – GIPA Act

I am writing you about the application you made to Transport for New South Wales (TfNSW) under the *Government Information (Public Access) Act 2009* (GIPA Act).

1. BACKGROUND

1.1 On 16 December 2016 TfNSW received your GIPA Act application (reference TRA-000335) for access to (Application):

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 (eg. our current buses)*
- c. *Forecast likely average light rail journey time from Kingsford to the City and Randwick to the City*

1.2 On 23 January 2017 a decision on the Application was finalised (Original Decision). The decision advised that the information you were seeking was publicly available in the following documents:

- (a) CBD and South East Light Rail Project Submissions Report, incorporating Preferred Infrastructure Report – Volume 1 – Main Volume

- 1.3 On 6 April 2017 the Information & Privacy Commission (IPC) finalised an external review of the Original Decision. The IPC noted that, in its view, TfNSW did not conduct reasonable searches for the information requested in the Application and recommended that TfNSW make a new decision by way of an internal review (see section 93 of the GIPA Act).
- 1.4 On 9 June 2017 you were advised by TfNSW that it was undertaking a review of the Original Decision.

2. SCOPE AND METHODOLOGY FOR SECTION 93 RECONSIDERATION

- 2.1 The IPC has recommended that TfNSW reconsider its decision under section 93 of the GIPA Act. In accordance with section 93(3) of the GIPA Act, the reconsideration of the decision is by way of internal review of the decision in accordance with Division 2 of the GIPA Act.

3. INTERNAL REVIEW IS A FRESH DECISION

- 3.1 In accordance with section 84 of the GIPA Act, the internal review is to be conducted by making a new decision rather than merely reviewing the existing decision.

4. SEARCHES

4.1 Searches conducted

Under the GIPA Act, we must conduct reasonable searches to locate the government information for which you have applied. The IPC decision noted that it was not satisfied that TfNSW did not conduct reasonable searches in relation to the Application. As a result of this internal review, the following areas of TfNSW conducted searches:

- Transport Networks Branch in the Freight, Strategy and Planning Division
- CBD Coordination Office
- Sydney Light Rail Delivery Office in the Infrastructure and Services Division

4.2 Outcome of searches

Transport Networks Branch, Freight Strategy and Planning Division

The Director, Transit Network Strategy provided the following response in reference to the fresh searches. In summary, no further information was held that is not subject to cabinet in confidence provisions. The references below are references to each point of your Application:

1a. Forecast demand and capacity was recorded in the CSELR in 2013, and subsequently increased light rail vehicle capacity was reported in the public EIS modifications and public announcements regarding the higher capacity vehicles offered by ALTRAC

1b. Indicative bus network changes were reported in the CSELR in 2013. It would be a matter for the infrastructure and Services Division (Sydney Light Rail Delivery Office) to comment on more recent information

1c. This would be for the Infrastructure and Services Division (Sydney Light Rail Delivery Office) to comment.

2a. Alternative options were discussed in the CSLER EIS in 2013. This analysis did not include electric buses.

2b. The CSELR Business Case Summary was released in 2013. This reported \$707 million of operating cost savings compared to the existing bus based transport network. It would be a matter for the Infrastructure and Services Division (Sydney Light Rail Delivery Office) to advise if there is any more recent information

2c. Estimated journey times were discussed in the CSELR EIS in 2013. It would be a matter for the Infrastructure and Services Division (Sydney Light Rail Delivery Office) to advise of any more recent information.

CBD Coordination Office

The CBD Coordination Office advised that it had conducted further searches and did not locate any additional information.

Sydney Light Rail Delivery Office, Infrastructure and Services Division

The Sydney Light Rail Delivery Office (SLRDO) has conducted further searches and has located additional information as identified in the table below:

Item	Document
1	End State SCATISM Modelling Transport Modelling Assessment (GTA Consultants) August 2016
2	Strategic Plan – Options Identification Report (Booz&Co) January 2016
3	Strategic Plan – Integrated Transport and Land Use Milestone 5: Option Assessment (Booz&Co) July 2012
4	Strategic Plan – Integrated Transport and Land Use Milestone 5: Options Assessment Volume II Appendices (Booz&Co) July 2012
5	Transport Operations Report (Booz&Co) November 2013
6	Strategic Plan – Transport Network Context (Trevor Townson Consulting) November 2011
7	Rapid Economic Appraisal Addendum Report 2: Bus Comparator (PWC) July 2012
8	CBD Bus and Traffic Network Plan for Light Rail – Discussion Paper (TfNSW) July 2012
9	CBD Bus and Traffic Paramics Modelling (SKM) July 2012

5. OVERVIEW OF PROCESS

As noted in *Southern Radiology Nuclear Medicine v Environmental Protection Authority* [2014] NSWCATAD 145 at [55]:

‘ the decision making process is a three step process:

- (a) Identifying the public interest considerations in favour of disclosure
- (b) Identifying the public interest considerations against disclosure and then
- (c) Determining where the balance lies.’

Section 5 of the GIPA Act provides that there is a presumption in favour of disclosure of government information, unless there is an overriding public interest against disclosure. Section 3 of the GIPA Act states there will be an overriding public interest against disclosure only if the public interest considerations against disclosure, on balance, outweigh the public interest considerations in favour of disclosure.

In *Hurst v Wagga Wagga City Council* [2011] NSW ADT 307 Judicial Member Molony in the Administrative Decisions Tribunal observed that this exercise ‘ is a question of fact and degree, requiring the weighing of competing matters, and is a task that is not amenable to mathematical consideration’.

6. THE PUBLIC INTEREST IN FAVOUR OF DISCLOSURE

Although section 12 of the GIPA Act permits TfNSW to have regards to any relevant factor when considering the public interest in favour of disclosure, it is important to note that for a factor to be relevant or to attract a significant weighting there should be some public interest or public benefit disclosure.

In the matter of *Director of Public Prosecutions v Smith* [1991] 1 VR 63 at [75] the Appeal Division of the Supreme Court of Victoria was of the following view:

The public interest is a term embracing matters, among other, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals: Sinclair v Mining Warden at Maryborough (1975), at p. 480 per Barwick CJ. There are several and different features and facets of interest which form the public interest. On the other hand, in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.

Section 12 provides some non-exhaustive examples of public interest considerations. Very briefly they can be summarised as follows:

- promoting open discussion of public affairs or contributing to positive and informed debate on issues of public importance;
- enhancing government accountability;
- informing the public about the operations of a government agency and especially policies and practices for dealing with the public;
- ensuring effective oversight of the expenditure of public funds;
- exposing misconduct or negligence by a government agency

Further, section 3(2)(a) of the Act provides that “*this Act be interpreted and applied so as to further the object of this Act*” and section 3(1) states that the objectives of the Act are “*to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective* ” and the reference to fairness presumably reflects the public interest in ensuring that an agency’s decisions have afforded “natural justice”.

Having regard to the examples in section 12 and to the objects in section 3 it is clear that in order for me to consider a particular factor as a public interest in favour of disclosure carrying any weight it needs to have a public interest or public benefit in the sense of furthering good and open government. A benefit or interest merely to an individual without any real discernible flow-on benefit to the public is insufficient.

7. IDENTIFYING RELEVANT CONSIDERATIONS

7.1 Conclusive Presumption Against Disclosure

Section 14(1) of the GIPA Act states that there is a conclusive presumption against disclosure in respect of government information listed in Schedule 1 of the GIPA Act.

In **Schedule A** I have identified the documents that are Cabinet information.

7.2 Factors in Favour of Disclosure

Having regard to the information available to me I have identified in **Schedule B** the possible considerations in favour of disclosure of the information sought.

7.3 Factors Against Disclosure

Section 14 of the GIPA Act lists the only considerations that may be taken into account as public interest considerations against disclosure. I have identified these in **Schedule C**.

8. ASSESSMENT

8.1 Methodology

I have identified the conclusive presumptions against disclosure. **Schedule A** sets out my assessment and decision in this regard.

After identifying the public interest considerations for and against disclosure the GIPA Act requires me to assess their merits and weigh their significant. **Schedules B and C** set out my assessment and weightings having regard to the principles set out in **Paragraph 8**.

8.2 Demonstrated Effect

The table to section 14 of the GIPA Act lists potential public interest factors against disclosure. It is insufficient to merely allege one of those factors applies. I am required to be satisfied that disclosure “could reasonably be expected” to have the effect claimed.

In considering the relevance and merits of any public interest factor against disclosure I have had regard to the Tribunal’s decision in *Flack v Commissioner of Police* [2011] NSWADT 286 in which the Tribunal found that the test to be applied is an objective one approached from the view point of the reasonable decision-maker. Further, that something which could reasonably be expected is something which is more than a mere possibility or risk or chance and it must be based on real and substantial grounds and not be purely speculative, fanciful, imaginary or contrived.

8.3 Principles

I undertook the assessment as required by section 15 of the GIPA Act, namely:

- (a) in a way that promotes the objects of the GIPA Act;
- (b) with regard to any relevant guidelines issued by the Information Commissioner;
- (c) without taking into account any embarrassment to, or a loss of confidence in, TfNSW or the NSW Government;
- (d) without taking into account the fact that disclosure of the information might be misinterpreted or misunderstood by anyone;
- (e) with regard to the fact that limits cannot be imposed on your use of any information disclosed to you; and
- (f) that (subject to the exceptions in sections 72(2) and 73(2) and (3) of the GIPA Act) access must be provided in the manner you request and without conditions.

8.4 Forms of Access: Imposing Conditions to Assist Access

Sections 72 to 75 of the GIPA Act contain some principles as to how access should be provided where access is granted. In assessing the application I have had regard to those

sections in case any of them might assist in overcoming or lessening any public interest consideration against disclosure that I have identified.

Very briefly, these sections state:

- That access can be given a number of ways (including by inspection rather than release of documents) but that unless one of the exceptions in s. 72(2) applies, access should be afforded in the manner requested by an applicant.
- While no condition can be imposed on how information may be used by an applicant, under s.73 conditions can be imposed on how the access is exercised (for example, no notes to be taken during an inspection) where such a condition would avoid there otherwise being an overriding public interest against disclosure.
- Parts of a document can be redacted under s.74 in order to remove information which is out of scope in order to prevent the whole document being withheld.
- Although the GIPA Act does not require TfNSW to create new documents in response to an application, nevertheless TfNSW can choose to do so under s.75.

In reaching my decision I have had consideration to whether those sections could be applied to address or mitigate any public interest consideration against disclosure that might otherwise prevent disclosure.

9. DETERMINATION

9.1 Advice Required Under Section 61

Where TfNSW decides to refuse access, section 61 requires that you be advised of our findings and reasons and the general nature and the format of the records held by us that contain information sought by you.

My findings and reasoning is set out in **Schedules A, B and Schedule C** as guided by the principles in **Paragraph 7** and **Paragraph 8**.

9.2 Summary and Balance of Considerations

Schedules B and C set out the relevant factors for and against disclosure and my assessment of them. Under section 13 of the GIPA Act I have to consider whether the public interest considerations against disclosure 'on balance outweigh' those in favour. In summary I identified the following factors and decided the following weightings:

Factors For	Weight	Factors Against	Weight
Promoting open discussion of public affairs or contributing to informed debate on issues of public importance	Medium	Prejudice a person's legitimate business, commercial or financial interests	High
Enhancing government accountability	Medium		

10. DETERMINATION

10.1 Delegation

I am delegated under the GIPA Act to determine this internal review.

10.2 Summary

I note that the Original Decision provided access to the following publicly available documents:

- “*CBD and South East Light Rail Project Submissions Report, Incorporating Preferred Infrastructure Report – Volume 1 – Main Volume*”
Direct link to .pdf:

http://data.sydneylightrail.transport.nsw.gov.au/s3fs-public/Submissions-Report-incorporating-Preferred-Infrastructure-Report_Volume-1_Part-A.pdf

- *CBD and South East Light Rail Project Environmental Impact Statement – November 2013 (Volume 1A – Main Volume)*”, which can be directly accessed via the following link:

http://data.sydneylightrail.transport.nsw.gov.au/s3fs-public/CSELR%20EIS%20Volume%20A-C_reduced.pdf?iOipvlxO8VqE361CdHcXkb9RizJSdqim

In addition to the documents provided in the Original Decision, the table below represents a summary of my determination:

Item	Document	Determination
1	End State SCATISM Modelling Transport Modelling Assessment (GTA Consultants) August 2016	Overriding public interest against disclosure. Access to the document is refused (see Schedule B and C and Paragraph 9)
2	Strategic Plan – Options Identification Report (Booz&Co) January 2016	This document considers several different alignments, resulting in a short list route of options and does not fall within the terms of your request. This document is out of scope.
3	Strategic Plan – Integrated Transport and Land Use Milestone 5: Option Assessment (Booz&Co) July 2012	Cabinet information. Document out of scope (see Schedule A)
4	Strategic Plan – Integrated Transport and Land Use Milestone 5: Options Assessment Volume II Appendices (Booz&Co) July 2012	Cabinet information. Partly out of scope. Access to information that is in scope has been refused (see Schedule A).
5	Transport Operations Report (Booz&Co) June 2013	This document is publicly available at http://sydneylightrail.transport.nsw.gov.au/library - go to ‘Environment and Planning Documents’ / ‘Environmental Impact Statement Modifications and Approvals’ / ‘Technical Papers 1 & 2’
6	Strategic Plan – Transport Network Context (Trevor Townson Consulting) November 2011	Cabinet information. This document is out of scope (see Schedule A)
7	Rapid Economic Appraisal Addendum Report 2: Bus Comparator (PWC) July 2012	Cabinet information. This document is out of scope (see Schedule A)
8	CBD Bus and Traffic Network Plan for Light Rail – Discussion Paper (TfNSW) July 2012	Cabinet information. Access refused (see Schedule A).
9	CBD Bus and Traffic Paramics Modelling (SKM) July 2012	Cabinet information. This document is out of scope (see Schedule A)

11. YOUR APPEAL RIGHTS

Under sections 89-101 of the GIPA Act you have a right to have this decision reviewed. Please contact the Information Commissioner (www.ipc.nsw.gov.au) and/or the NSW Civil and Administrative Tribunal (NCAT) (www.ncat.nsw.gov.au) for more information.

Yours sincerely

A handwritten signature in black ink that reads "Clarinda Campbell". The signature is written in a cursive, slightly slanted style.

Clarinda Campbell

A/Principal Manager, Information & Privacy

SCHEDULE A

CONCLUSIVE PRESUMPTION AGAINST DISCLOSURE

Schedule A records my identification of the relevant conclusive presumptions against disclosure and my assessment of the documents that are captured by Schedule 1.

DEFINITION OF CABINET INFORMATION

Clause 2 of Schedule 1 of the GIPA Act defines Cabinet information as follows:

- 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) *a document that contains an official record of Cabinet,*
 - (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),*
 - (c) *a document prepared for the purpose of its being submitted to Cabinet for Cabinet's approval for the document to be used for the dominant purpose for which it was prepared (whether or not the document is actually submitted to Cabinet and whether or not the approval is actually given),*
 - (d) *a document prepared after Cabinet's deliberation or decision on a matter that would reveal or tend to reveal information concerning any of those deliberations or decisions,*
 - (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.*

DOCUMENTS - CABINET INFORMATION

The documents in the table below have been identified as Cabinet information. The references to Item numbers below are consistent with the Item numbering referred to in the table in Paragraph 4.

Item	Document
3	Strategic Plan – Integrated Transport and Land Use Milestone 5: Option Assessment (Booz&Co) July 2012
4	Strategic Plan – Integrated Transport and Land Use Milestone 5: Options Assessment Volume II Appendices (Booz&Co) July 2012
6	Strategic Plan – Transport Network Context (Trevor Townson Consulting) November 2011
7	Rapid Economic Appraisal Addendum Report 2: Bus Comparator (PWC) July 2012
8	CBD Bus and Traffic Network Plan for Light Rail – Discussion Paper (TfNSW) July 2012
9	CBD Bus and Traffic Paramics Modelling (SKM) July 2012

REASONS AND SCOPE

Item 3 – Strategic Plan – Integrated Transport and Land Use Milestone 5 (Booz&Co) July 2012

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

The document contains a number of route options for the Sydney Light Rail project. Each option is described within the document through the use of tables and contains estimates of light rail travel times.

This document falls within the scope of point 2 of your Application. I note that you specifically stated in point 2 of your application that you '*specifically seek information which is not subject to cabinet-in-confidence provisions*'.

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 3 is Cabinet information. As such, it falls outside the scope of your request.

Item 4 - Strategic Plan – Integrated Transport and Land Use Milestone 5: Options Assessment Volume II Appendices (Booz&Co) July 2012

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the

dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

The document refers to bus demand forecasts and the impact on vehicle traffic. It also looks at the average forecast journey times for light rail which are more directly related to point 2 of your request. I note that you specifically stated in point 2 of your application that you '*specifically seek information which is not subject to cabinet-in-confidence provisions*'. As such, information related to these matters falls outside the scope of your request.

However, on pages 201 of the document, there is a section titled 'Patronage Estimates'. The estimates refer to "Peak Link Loadings" as opposed to the licensed and forecast average operational loadings for light rail vehicles. It then goes on to refer to the expected capacity of seated and standing passengers on proposed rolling stock, which would appear to fall within point 1 of your request. Further, there is an analysis of the estimated AM peak hour demand (boardings).

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 4 is Cabinet information. I have identified above that parts of the document fall outside the scope of your request but that other parts of the document (patronage estimates) fall within the scope of your request.

Item 6 - Strategic Plan – Transport Network Context (Trevor Townson Consulting) November 2011

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

This document was prepared to identify whether and/or where there may be potential for light rail to play a role in the provision of public transport in inner Sydney. The aim of the study was to inform the strategic assessment of the transport network, modes and operating corridors.

The document does not fall squarely within the scope of the terms of your application as it does not specifically refer to the items listed in your application.

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 6 is Cabinet information. However, it falls outside the scope of your request.

Item 7 - Rapid Economic Appraisal Addendum Report 2: Bus Comparator (PWC) July 2012

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the

dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

This document supplements the analysis of the Sydney Light Rail Strategic Plan and refers to cost/benefit analysis. The document considers a bus comparator to light rail options. As such, this document falls within the scope of point 2 of your Application. I note that you specifically stated in point 2 of your application that you '*specifically seek information which is not subject to cabinet-in-confidence provisions*'.

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 3 is Cabinet information. As such, it falls outside the scope of your request.

Item 8 - CBD Bus and Traffic Network Plan for Light Rail – Discussion Paper (TfNSW) July 2012

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

This document contains information about the bus network and forecast patronage for the light rail in peak hour. As such, this document falls within point 1 of your request.

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 8 is Cabinet information.

Item 9 - CBD Bus and Traffic Paramics Modelling (SKM) July 2012

I have been informed by SLRDO that this document is Cabinet information because the document is labelled 'Cabinet in Confidence' and the document was prepared for the dominant purpose of information Cabinet in their decision to proceed with the Sydney Light Rail Project (see clause 2(1)(b) of Schedule 1 of the GIPA Act).

This document supplements the analysis of the Sydney Light Rail Strategic Plan. The document contains analysis that was prepared to assess the likely traffic impacts in the Sydney CBD from the implementation of the Sydney Light Rail. A number of proposed scenarios were used to assess the impacts on traffic operations.

The document does not fall squarely within the scope of the terms of your application as it does not specifically refer to the items listed in your application.

I have reviewed the document and the document has been marked 'Cabinet in Confidence'. I have also relied heavily on the advice of the business area that the document was prepared for the dominant purpose of being provided to Cabinet for Cabinet's consideration. As such, I am satisfied that Item 9 is Cabinet information. However, it falls outside the scope of your request.

CONCLUSION

The table below provides a summary of my decision in relation to the documents identified as Cabinet information:

Item	Document	Determination
3	Strategic Plan – Integrated Transport and Land Use Milestone 5: Option Assessment (Booz&Co) July 2012	Cabinet information. Document out of scope (see Schedule A)
4	Strategic Plan – Integrated Transport and Land Use Milestone 5: Options Assessment Volume II Appendices (Booz&Co) July 2012	Cabinet information. Partly out of scope. Access is refused to information in scope (see Schedule A).
6	Strategic Plan – Transport Network Context (Trevor Townson Consulting) November 2011	Cabinet information. This document is out of scope (see Schedule A)
7	Rapid Economic Appraisal Addendum Report 2: Bus Comparator (PWC) July 2012	Cabinet information. This document is out of scope (see Schedule A)
8	CBD Bus and Traffic Network Plan for Light Rail – Discussion Paper (TfNSW) July 2012	Cabinet information. Access refused (see Schedule A).
9	CBD Bus and Traffic Paramics Modelling (SKM) July 2012	Cabinet information. This document is out of scope (see Schedule A)

SCHEDULE B

PUBLIC INTEREST CONSIDERATIONS IN FAVOUR OF DISCLOSURE

Schedule B records my identification of the potential relevant public interest considerations in favour of disclosure and my assessment of their merits and weighting in accordance with the principles set out in Paragraph 8 as to whether the interest is a public interest which furthers the objectives of the GIPA Act to advance open, accountable, fair and effective government.

PROMOTING OPEN DISCUSSION OF PUBLIC AFFAIRS OR CONTRIBUTING TO INFORMED DEBATE ON ISSUES OF PUBLIC IMPORTANCE

The information requested relates to the Sydney Light Rail Project. This project is a significant project that is being managed by TfNSW. There has been significant public interest in the project and the information is expected to inform the public about the background to the project.

Release of the requested information may promote discussion about government decisions relating to the Sydney Light Rail Project. As such, I give this consideration a medium weighting.

ENHANCING GOVERNMENT ACCOUNTABILITY

Providing access to government information often assists in enhancing government accountability. In this instance the information includes information about the Sydney Light Rail Project and background information that led to the implementation of the project.

Release of the requested information may enhance accountability as the information has informed government decisions relating to the Sydney Light Rail Project. As such, I give this consideration a medium weighting.

SCHEDULE C

PUBLIC INTEREST CONSIDERATIONS AGAINST DISCLOSURE

Schedule C records my identification of the potential relevant public interest considerations against disclosure and my assessment of their merits and weighting in accordance with the principles set out in Paragraph 8.

PREJUDICE A PERSON'S LEGITIMATE BUSINESS, COMMERCIAL OR FINANCIAL INTERESTS

Item 4(d) of the Table in section 14 of the GIPA Act states that a public interest consideration against disclosure may exist if disclosure could reasonably be expected to prejudice a person's legitimate business, commercial, professional or financial interests.

The tribunal has held in *Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services* [2012] NSWADT 195 that for this consideration to be made out there must be an element of 'detriment or disadvantage' caused by the release.

Information has commercial value to a person if a genuine arms-length buyer is prepared to pay to obtain that information from that person, such that the market value of the information would be destroyed or diminished if it could be obtained from a government agency which has possession of it (see *Re Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 and *McKinnon v Blacktown City Council* [2012] NSWADT 44).

For information to have commercial value, there should be some uniqueness attaching to the information that justifies treating it as exclusive, secret or confidential (see *Hall v Department of Premier and Cabinet (NSW)* [2012] NSWADT 46 at [56]).

I am informed that release of the information would have the following prejudicial effect on the business, commercial or financial interests of ALTRAC on the basis that:

- (a) the Modelling Assessment relies to some extent on ALTRAC's Operational Model (for example the statement on page 50 that "*Dwell times have been provided by PPP Co and assumed from their operational model*"); and
- (b) to the extent ALTRAC's Operational Model is proprietary information and relevant elements can be discerned or reverse engineered from the Modelling Assessment, revealing that information could diminish the commercial value of ALTRAC's intellectual property in its Operational Model.

I am of the view that if the information were to be disclosed competitors would have the opportunity to use the operational model to their advantage to diminish ALTRAC's competitiveness in the marketplace. As such, I have given this consideration a high weighting.

I note that the public interest in favour of disclosure has been satisfied by the publication of the Environmental Impact Statement, which is publicly available on the Sydney Light Rail website (<http://sydneylightrail.transport.nsw.gov.au/library>)