

31 January 2018

Our ref: TRA-000335

Your ref:

Mr John Bellamy
By email: john@johnbellamy.biz

Dear Mr Bellamy,

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

Applicant:	John Bellamy
File reference:	TRA-000335
Decision maker:	Patrick O'Meally
Received date:	12 December 2017
Due date:	16 January 2018
Extended due date:	31 January 2018
Date of decision:	31 January 2018

1 Your access application

1.1 On 12 December 2017 we received the Information Commissioner's review report under the GIPA Act. You originally applied for 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 (eg. our current buses)

c. Forecast likely average light rail journey time from Kingsford to the City and Randwick to the City.

- 1.2 Your original application was received on 16 December 2016 and this application was decided on 23 January 2017, notifying you that certain documents were publicly available. You applied to the Information Commissioner for an external review and the Information Commissioner's first review report was issued on 6 April 2017.
- 1.3 TfNSW notified you on 9 June 2017 that it was undertaking a review of the original decision. The internal review decision was made on 21 July 2017. You applied to the Information Commissioner for a second external review and the Information Commissioner's second review report was issued on 12 December 2017.
- 1.4 Given the intervening mandatory shutdown period for Christmas and New Year, a new decision was required to be made by 16 January 2018. I contacted you to inform you that I was consulting with two external third parties and requested an extension until 31 January 2018 – thank you for agreeing to an extension.

2 Scope

- 2.1 In accordance with the recommendations of the second review report, this decision is limited to the *Sydney CBD and South East Light Rail End State SCATSIM Modelling Transport Modelling Assessment* dated 26 August 2016 (ref 16S1465000), pages 1-42, 50-115 and 731-756.
- 2.2 Note, however, that I have renumbered the pages continuously from the title page, resulting in adjusted page numbers, correspondingly: pages: 5-46, 53-114 and 731-756. I have taken this approach because it aligns with the body and appendices of the modelling report.

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 Please see below a summary of my decision:

Page Ref.	Information	Act Ref.	Access
5-46, 53-114 and 731-756	<i>Sydney CBD and South East Light Rail End State SCATSIM Modelling Transport Modelling Assessment</i> dated 26 August 2016 (ref 16S1465000), (identified by the IPC as pages 1-42, 50-115 and 731-756)	s14 Table 4(c)(d)	Partial

4 Reasons for Decision

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.

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.

4.1 Public interest test

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

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.

4.2 Public interest considerations in favour of disclosure

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.

Your application is for information created as part of the process of managing the Sydney Light Rail project. This is a large infrastructure project which is highly visible to the public and the process of its construction is having a significant impact on the road network and on local businesses in the CBD and South East Sydney. There is significant interest on the part of the public in how the project is progressing and in how it is being managed. I find the following public interest considerations in favour of disclosure are relevant to your application:

- 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.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

Given the nature of the project and the impact upon the community, I have attributed significant weight to these considerations.

4.3 Personal factors of the application

Under section 55 of the GIPA Act, I can also take into account any personal factors of your application. I have considered that you are a member of the community affected by the Sydney Light Rail Project and are a member of the community group 'Save our trees and animals campaign'. This group aims to save trees and to have the Sydney Light Rail project cancelled (as stated on its public website).

4.3.1 These factors may be taken into account either as considerations in favour of disclosure or considerations against disclosure. However, I am only permitted to take them into account as factors against providing access if (and only to the extent that) those factors are relevant to my consideration of whether the disclosure of the information concerned could reasonably be expected to have any of the effects referred to in clauses 2–5 of the Table to section 14.

4.3.2 Accordingly, in light of the public interest considerations against disclosure that I have identified, I have taken the personal factors of the application into account as factors weighing in favour of disclosure.

4.3.3 I have given the personal factors of your application moderate weight.

4.4 Characteristics of the information

- 4.4.1 I understand that the report and modelling results represent an initial forecast of light rail travel times and network performance. The report is based on a model developed in 2013 and incorporates traffic demand assumptions from that time. Accordingly, the background assumptions for traffic volume demands across the network do not reflect current network performance and traffic volume demand.
- 4.4.2 The modelling report does not take into account the reduction in traffic demand and congestion since 2015. I understand that this is due to the Travel Choices Program which TfNSW launched in 2015, which has achieved an 11 per cent reduction in the number of inbound vehicles to the CBD and a 9.4 per cent increase in public transport use for trips into the Sydney CBD during the morning peak period.
- 4.4.3 For this reason, the forecast traffic impacts are higher than they are expected to be after construction. I understand that the light rail travel time and network performance will be revised after detailed design work on intersections has been completed.
- 4.4.4 I have not taken the characteristics of the information into account when deciding whether to grant access to the information.

4.5 Public interest considerations against disclosure

- 4.5.1 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. I have identified the following considerations against disclosure as being relevant to the new decision regarding the modelling report:
- 4.5.2 Clause 4 of the Table to section 14 of the Act relevantly reads:

4 Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

...

(c) *diminish the competitive commercial value of any information to any person,*

(d) *prejudice any person's legitimate business, commercial, professional or financial interests,*

...

4.6 Consultation

- 4.6.1 The information you requested includes business information of third parties. Under section 54 of the GIPA Act, I was therefore required to consult with those entities before releasing the information.
- 4.6.2 There was an objection to the release of the information.
- 4.6.3 The objection does not mean that I cannot release the information. However, I must take it into account when making my decision. I have therefore considered it when applying and balancing the public interest test.

- 4.6.4 The third party objected to part 4.3 of the report being disclosed as that information would diminish its competitive and commercial position if disclosed (clause 4(c) of the section 14 table); and also that the information would prejudice its legitimate business interests if released to third parties (clause 4(d) of the section 14 table). The third party claims that the disclosure of this information would place it at an unfair disadvantage on other similar projects for which it is competing because it would reveal the journey time methodology, operating parameters and technical principles which are based on its own pre-existing intellectual property. It would also reveal the risk tolerance of the third party.
- 4.6.5 The third party also objected to part 4.5 of the report being disclosed as that information represents, in part, commercial arrangements that the third party was considering accepting at the time of the report. The third party claims that knowledge of the third party's proposed journey times and associated risk tolerance would diminish its competitive commercial position (clause 4(c) of the section 14 table); and that it would also prejudice its legitimate business interests (clause 4(d) of the section 14 table). The third party claims, similarly, that this information also would place it at an unfair disadvantage on other similar projects for which it is competing because it would reveal the journey time methodology, operating parameters and technical principles which are based on the third party's own pre-existing intellectual property. This information, too, would reveal the risk tolerance of the third party.
- 4.6.6 I have attributed significant weight to these objections.

4.7 Balancing the public interest considerations

- 4.7.1 I have considered the relevant public interest considerations in favour of and against disclosure of the information that you have requested.
- 4.7.2 Balanced against these claims is the purpose of the SCATSIM assessment: to analyse and assess the light rail and road network performance under end state conditions (see page 1 of the Report). In other words, the report aims to estimate the traffic impacts and light rail travel times "*... so that detailed congestion management plans can be developed to address any operational issues that may arise after the light rail is fully operational*".
- 4.7.3 The report does this by applying assumptions and running scenarios using the model described in the earlier part of the report. The report itself identifies those assumptions and modelling parameters that have been provided by the ALTRAC consortium. The Report also contains information that is derived from operational and commercial assumptions and from modelling of the third parties involved in the project. Consequently, disclosing certain parts of the report would reveal the third party's operating parameters and technical principles that were a factor in its selection as part of the consortium.
- 4.7.4 I have also considered the personal factors of your application as factors in favour of disclosing the information you have applied for.
- 4.7.5 The third party has informed me that it is currently competing for other similar projects where the operating parameters and technical principles will also be a factor in the third party's bid for work on those other projects. If this information were known to the third party's competitors, the competitors could use this information to tailor their bids to make them more competitive with the third party. This would pose an unfair disadvantage to the third party.
- 4.7.6 For this reason, I have formed the view that disclosing certain information may reasonably be expected to have the effect of both diminishing the competitive commercial value of the information to the third party and of prejudicing the commercial interests of the third party.
- 4.7.7 Having weighed up the considerations, I have decided that there is an overriding public interest against disclosure of certain information covered by your application.

- 4.7.8 However, as provided under section 74 of the GIPA Act, I have decided to delete this information from the record in order to facilitate access to the remainder of the record. The deleted information was located at part 4.3 (pages 20-23), part 4.5 (pages 29-31) and part 5.1 (page 36). Similarly, I deleted information on numbered pages 728-730 and numbered pages 735-739, for the reason that it includes information of the type contained in parts 4.3 and 4.5. I have also deleted references to this information in the table of contents.
- 4.7.9 Apart from these deletions, I have decided to provide access to the pages identified by the Information Commissioner in the review report. As I have numbered the pages, this includes pages 5-46, 53-114 and 731-756 (except for the deleted information noted above).

5 Access

5.1 Form of access

You will be provided a link to the TfNSW secure file server (by email) to download a copy of the information that has been identified for release.

5.2 Third party review rights

As set out earlier in this Notice, I consulted with third parties about your application and there were objections to information being disclosed. Since I have decided to delete from the record information that was the subject of the objections, I have decided to provide access to information straight away.

6 Processing Charges

Since this is a new decision in accordance with the recommendation in the Information Commissioner's review report, you have not been charged a fee for the time spent dealing with your access application.

7 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 note that you have not objected to such disclosure.

I have decided to include details about your access application in the disclosure log.

8 Review rights

If you disagree with my decision, you may apply for this decision to be reviewed by seeking:

- an external review by the NSW Information Commissioner; or
- an external review by the NSW Civil and Administrative Tribunal (NCAT).

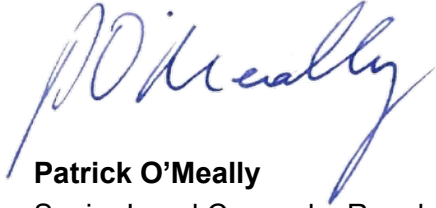
You have 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT. A person is not entitled to an internal review of a decision made on internal review, under section 88 of the GIPA Act.

9 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 Patrick O'Meally by phone on 8202 3574 if you have any questions about this letter.

Yours sincerely,



Patrick O'Meally
Senior Legal Counsel – Regulatory