



2 July 2018

Mr Philip Charles Walker
184 Warriewood Road
Mona Vale NSW 2103

By email: cabalkarma@gmail.com

Dear Mr Walker,

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

| | |
|--------------------------|---------------|
| Applicant: | Philip Walker |
| File reference: | RWC-005142 |
| Decision maker: | Natacha Doust |
| Received date: | 6 June 2018 |
| Due date: | 5 July 2018 |
| Date of decision: | 2 July 2018 |

1 Your access application

1.1 On 6 June 2018 we received your access application under the GIPA Act for the following information:

- '1. Horizontal and vertical alignments for Mona Vale Road East Upgrade.*
- 2. Details of safety arrestor bed, and separation barrier and wildlife under & overpasses and pedestrian and cyclist access. . '*

2 Searches for information

2.1 Under the GIPA Act, we must conduct reasonable searches to locate the government information for which you have applied. The following areas of this agency have conducted searches:

- Sydney Division
 - Sydney Maintenance
 - Greater Sydney Project Office

2.2 Information has been identified as falling within the scope of your application.

3 **Decision**

- 3.1 I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.
- 3.2 Please see below a summary of my decision:

| Item Ref. | Information | Act Ref. | Access |
|----------------|--|---------------------------------------|---------|
| 1 (107 sheets) | Mona Vale Road Alignment Plan (including horizontal and vertical alignments, truck arrestor bed and footpath/shared path). | Table to s14 clauses 1(d), 1(e), 1(f) | Refused |
| 2 (54 sheets) | Road cross sections: <ul style="list-style-type: none">• between Manor Road and Foley Street;• between McCarrs Creek Road (Terrey Hills) and Powder Works Road (Ingleside). | Table to s14 clauses 1(d), 1(e), 1(f) | Refused |
| 3 (37 sheets) | Fauna Overpass general arrangement and details | Table to s14 clauses 1(d), 1(e), 1(f) | Refused |
| 4 (16 sheets) | Fauna Underpass general arrangement and details | Table to s14 clauses 1(d), 1(e), 1(f) | Refused |

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:

- identifying any public interest considerations in favour of disclosure;
- identifying any relevant public interest considerations against disclosure;
- attributing weight to each consideration for and against disclosure; and
- 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.

I find the following considerations in favour of disclosure are relevant to your application:

- There is a general public interest in the disclosure of government information.

4.3 Public interest considerations against disclosure

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 your application:

Clause 1 of the Table to section 14 of the Act relevantly reads:

1 Responsible and effective government

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 (whether in a particular case or generally):

- (a) – (c) ...
- (d) *prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,*
- (e) *reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,*
- (f) *prejudice the effective exercise by an agency of the agency's functions,*
- (g) – (h) ...

Clauses 1(d) and 1(e):

The requested information forms a major part of the Upgrade Project Tender Set. As the tender submissions assessment phase is still underway, and a contractor is yet to be selected by Roads and Maritime Services (Roads and Maritime), the disclosure of this information could reasonably be expected to reveal the details of a confidential deliberation process (namely, the tender evaluation phase of the Project). This process involves the analysis of tenderers' commercially sensitive information (e.g. design drawings), and the confidential departmental recommendations and decisions involved in that process.

Accordingly, disclosing this information is likely to cause prejudice to the tender assessment process and to the legitimate business interests of tenderers to this Project.

Clause 1(f):

One of Roads & Maritime's key functions is to undertake transport improvement projects such as the Mona Vale Road Upgrade. Such projects require extensive collaboration between Roads & Maritime and the private sector.

The disclosure of this information can reasonably be expected to interfere with this key agency function, which requires the private sector to share commercially sensitive information with Roads and Maritime, to facilitate transport projects. Making this information public is likely to discourage the private sector from submitting bids to future Roads & Maritime projects that require the use of commercially sensitive information. This is in turn reasonably likely to directly impact the agency's ability to effectively exercise its functions.

4.4 Balancing the public interest considerations

4.4.1. I have considered the relevant public interest considerations in favour of and against disclosure of the information that you have requested.

4.4.2. The request for information within the terms of the subject application did not include any reasons for seeking the information, or personal factors in support of the request. As such, I consider that there is only a general public interest in the release of the information in this instance. I have attributed low weight to this factor in favour of release. For the reasons outlined in paragraph 4.3 above, I have attributed significant weight to the factors against disclosure of the information located

in response to the request.

4.4.3. Having weighed up the considerations, I have decided that there is an overriding public interest against disclosure of the information and have refused access on this basis.

5 Access

5.1 Form of access

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

6 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.

7 Review rights

If you disagree with my decision, 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.

8 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 Melanie Maskell by phone on 9563 8824 if you have any questions about this letter.

Yours sincerely,

Natacha Doust

Natacha Doust

Manager, Information Access