

30 November 2018

  
Willoughby Environmental Protection Association (WEPA)

By email: 

Dear Dr Foley,

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

<b>Applicant:</b>	WEPA
<b>File reference:</b>	19R-0000
<b>Decision maker:</b>	Natacha Doust
<b>Received date:</b>	16 October 2018
<b>Due date:</b>	13 November 2018
<b>Extended due date:</b>	12 December 2018
<b>Date of decision:</b>	30 November 2018

**1 Your access application**

- 1.1 On 16 October 2018 we received your access application under the GIPA Act for the following information:

***The Beaches Link Tunnel Business Case***

*The project is in the consultation phase until November 9 2018. This may be a combined business case of the Western Harbour Tunnel with the Beaches Link.*

*Similar project Business Case documents - e.g. Westconnex Business Case - have provided important information for the impacted communities. I believe it is in the public interest for this information to be released. I am in a specific interested / impacted community in Naremburn because our local park is the selected primary dive site.*

- 1.2 On 26 October 2018 we notified you that to deal with the application in its current terms would require an advance deposit payment for processing charges. Under section 64(1) of the GIPA Act an agency may impose a charge (a processing charge) for dealing with an access application a rate

of \$30 per hour for each hour of processing time for the application. It was estimated that a processing charge of \$1140.00 for 38 hours of processing was required. The advance deposit payment amount was \$555.00, and the requested payment date was 23 November 2018.

- 1.3 On 20 November 2018 the name of the applicant for your request were amended by agreement as follows:

*Original applicant:* [REDACTED]

*New Applicant:* Willoughby Environmental Protection Association (WEPA)

- 1.4 On 20 November 2018 you indicated a preference for receiving future correspondence by email at [REDACTED]
- 1.5 On 20 November 2018, you informed us that the Willoughby Environmental Protection Association (WEPA) was a non-profit organisation and is volunteer based, and you requested a 50% discount for any processing charges applicable to your application on the basis that your organisation is a not for profit association.
- 1.6 On 20 November 2018, Roads and Maritime emailed you regarding the advance deposit payment notice and requested you to delay the payment of the advance deposit whilst we liaised with the relevant business area about the requested information.
- 1.7 On 23 November 2018 following consultation with the business area about these documents, it became apparent that a presumption of overriding public interest against disclosure of the requested information applied to the release of the documents.

Given the not-for-profit structure of the applicant organisation, Roads and Maritime used its discretion under section 64(1) of the GIPA Act to no longer require an advance deposit payment. As a result, the new decision date became 12 December 2018.

## 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:

- Motorways Division

- 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:

Page Ref.	Information	Act Ref.	Access
1	Business Case Volume 1 including 59 associated appendices	Clause 2(1)(b) and (e) of Schedule 1 of the GIPA Act	Refused
2	Business Case Volume 2 including 45 associated appendices	Clause 2(1)(b) and (e) of Schedule	Refused

		1 of the GIPA Act	
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## 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 **Conclusive presumption of an overriding public interest against disclosure**

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 provides:

#### **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.*

I am advised by the business area that the requested information, being The Beaches Link Tunnel Business Case, is 'Cabinet information' for the purposes of clauses 2(1)(c) of Schedule 1 of the GIPA Act.

I am informed that the Business Case was undertaken after Cabinet's approval of the NSW Government's response to the State Infrastructure Strategy Update 2014. A strategic assessment resulted in the production of the Business Case and its supporting information, which was created for the purpose of informing Cabinet (SC0377-2015).

I understand that following Cabinet's approval it was developed in 2016 for the purpose of informing Cabinet (SC0841-2016, SC0653-2016 and SC00651-2016).

I am advised that the project team has been seeking comments from communities and other stakeholders during 2017 and 2018, and the NSW Government has yet to make an investment decision on this initiative. I am further informed that the NSW Government will be deliberating, at some stage in 2019, on the final reference design, funding, financing, procurement and delivery strategy for this initiative.

Furthermore, I am advised that further analysis will inform the deliberations at some stage in 2019 and proposed developments may no longer be consistent with the current design.

I have considered clause 2(4) of Schedule 1 of the GIPA Act and as the document contains a series of recommendations, options, analysis and strategies for the proposed project, I am satisfied that it contains content that is more than solely factual information.

I am advised that Business Case was prepared for the dominant purpose of being submitted to Cabinet for Cabinet's consideration. I am also informed that it was generated for Cabinet's deliberation or decision on the initiative and 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.

I have also reviewed the appendices to these documents in light of the fact that information is not Cabinet information merely because it is attached to a document that meets the description of cabinet information. I am satisfied that information contained in the appendices is a critical component of the volumes as a whole as it supplements and informs these documents.

On this basis, I am satisfied that the Business case and associated appendices fall within the definition of cabinet information in Clause 2(1)(b) and (e) of Schedule 1 of the GIPA Act and is Cabinet information.

## 4.2 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.

#### **4.3 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:

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

#### **4.4 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:

- WEPA is community-based group with an interest in environmental protection. Your aim is to work for the protection and improvement of Willoughby's environment through effective planning, management and maintenance, both locally and beyond. Since the Beaches Link Project is in the area you aim to represent, you have a particular interest in the development, proposals and delivery of the project.

#### **5 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.

#### **6 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 not to include details about your access application in the disclosure log.

#### **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 Michael Tristram by phone on 9563 8687 if you have any questions about this letter.

Yours sincerely,

*Natacha Doust*

**Natacha Doust**

Manager, Information Access